

SBA

SOP 50 30 4

Disaster Assistance Program

Office of Disaster Assistance

U.S. Small Business Administration



SMALL BUSINESS ADMINISTRATION STANDARD OPERATING PROCEDURE

National

SUBJECT: Disaster Assistance Program	S.O.P.		REV
	SECTION 50	NO. 30	4

INTRODUCTION

1. Purpose. To provide policy and procedure for the Disaster Assistance Program.
2. Personnel Concerned. All SBA personnel involved in administering the Disaster Assistance Program.
3. Directives Cancelled. SOP 50 30 3.
4. Originator. Office of Disaster Assistance.

AUTHORIZED BY: Bernard Kulik Associate Administrator for Disaster Assistance		EFFECTIVE DATE 12-1-97
		PAGE 1

SBA Form 989 (5-90) Ref: SOP 00 23

Federal Recycling Program  Printed on Recycled Paper

This form was electronically produced by Elite Federal Forms, Inc.

TABLE OF CONTENTS

Paragraph		Page
CHAPTER 1.	INTRODUCTION	
1.	Authority	13
2.	Related Rules, Regulations, and SOPs	13
3.	Responsibilities	13
4.	Changes to this SOP	13
5.	Exceptions to Policy and SOP Requirements	14
6.	Types of Disaster Declarations and Other Assistance	14
7.	Attitude of SBA Disaster Personnel	14
8.	Authority to Approve, Decline, or Withdraw Loan Applications	14
9.	Confidential Information	16
10.	Referral to The Office of Inspector General (OIG)	17
11.	Congressional Inquiries	17
12.	Loan Case File Arrangement	17
CHAPTER 2.	ELIGIBILITY OF APPLICANTS FOR PHYSICAL DISASTER LOANS	
13.	Applicants Generally Eligible	19
14.	Restrictions on Applicant Eligibility	26
15.	Applicants Generally Ineligible	29
16.	Reserved	32

Paragraph	Page
CHAPTER 3. ELIGIBILITY OF PROPERTY FOR PHYSICAL DISASTER LOANS	
17. General Eligibility Rule	33
18. Location of Property	33
19. Primary Residence Eligibility	33
20. Reserved	34
21. Agricultural Property Eligibility	35
22. Repair or Replacement Cost Eligibility for Structures	35
23. Manufactured Housing (MH) Eligibility	36
24. Condominium Eligibility (Individual Units and Condominium Associations)	38
25. Other Association Eligibility	40
26. Land Eligibility	42
27. Landscaping Eligibility	44
28. Vehicle Eligibility	45
29. Vessel and Aircraft Eligibility	46
30. Home Loan Personal Property (PP) Eligibility	47
31. Business Contents Eligibility	48
32. Ineligible Property	49
33. Limited-Use Eligibility	51
34. Reserved	51
35. Reserved	51
CHAPTER 4. ADDITIONAL ELIGIBILITY REFINANCING, RELOCATION, MITIGATION	:

Paragraph	Page
36. Refinancing	53
37. Relocation	62
38. Upgrading	68
39. Alternate Use of Loan Eligibility	69
40. Protective Devices and Mitigation Measures	70

CHAPTER 5. AMOUNTS, TERMS, AND CONDITIONS OF PHYSICAL DISASTER LOANS

41. Limits on Loan Amounts	75
42. Major Source of Employment (MSE) Waiver of Lending Limit	76
43. Verification of Damage	78
44. Determination of Amount of Physical Loan Eligibility	78
45. Rounding of Dollar Amounts	84
46. Interest Rates	84
47. Loan Terms and Installment Payment Amounts	85
48. Collateral Requirements	90
49. Guarantee Requirements	96
50. Hazard Insurance Requirements	97
51. Flood Insurance Requirements	98
52. Effect of Floodplain Management (Executive Order 11988) and Wetlands Protection (Executive Order 11990) Requirements (See 13 CFR 120.172)	105
53. Anti-Discrimination Compliance Requirements	105
54. Requirements for Real Estate Repair	106
55. Conditions Relative to Leased Premises	108
56. Use of Loan Proceeds	109
57. Disbursement Period	111

Paragraph	Page
58. Reserved	111

CHAPTER 6. REGISTRATION, INTERVIEWING AND SCREENING

59. Definitions	113
60. FEMA Registration and the SBA Interview Process	114
61. Interviewer's Responsibilities	115
62. Interview Topics	117
63. Home Loan Application Forms	119
64. Business Loan Application Forms	119
65. Application to be Used for Rental Properties	120
66. Filing Period	120
67. Place of Filing Applications	121
68. Reserved	121
69. Screening Procedures	122
70. Reserved	126

CHAPTER 7. PROCESSING OF APPLICATIONS

71. Preliminary Steps in Loan Processing	127
72. Applicant's Representative	128
73. Duplication of Benefits (DOB)	130
74. Character Determination: Policy and Procedure	132
75. Equal Credit Opportunity Act (ECOA)	136
76. Credit Information	137
77. Consumer Credit Protection Act (Regulation Z)	142

Paragraph	Page
78. Use of Applicant's and/or Owner's Assets and Credit	142
79. Combination Loans	143
80. Types of Loan Officer's Reports (LOR)	144
81. Telephone Contact Upon Completion of Processing	144
82. Withdrawal of Applications	145
83. Decline of Applications	146
84. Documenting Repayment Ability	146
85. Limited Repayment Ability/Losses in Excess of Lending Limits	146
86. Legal Name of a Business Loan Applicant	147
87. Loan Authorization and Agreement (LAA)	147
88. Conditional Commitment Letter (CCL)	148
89. Loan Approval (Funding)	149
90. Notification To Borrower of Loan Approval	150
91. Reserved	151

CHAPTER 8. DISASTER LOAN CLOSING AND DISBURSEMENT

92. Responsibility for Closing Loans	153
93. Obtaining Loan Funds	153
94. Disbursement Period	153
95. Evidence Required Before Disbursement	154
96. Disbursement Amounts	156
97. Escrow Accounts and/or Controlled Accounts	157
98. Reserved	157
99. Reserved	157

Paragraph	Page
-----------	------

CHAPTER 9. RECONSIDERATION, APPEAL, AND REACCEPTANCE

100. Reconsideration of Declined Loan Applications	159
101. Further Reconsideration (Appeal)	160
102. Special Provisions Applicable to Reconsideration Processing	161
103. Reconsideration of Declined Loan Modification Requests	161
104. Reconsideration of Refusal to Classify Applicant as Major Source of Employment (MSE)	161
105. Reconsideration of Decline for Exceeding Applicable Size Standards	162
106. Reacceptance of Withdrawn Applications	162
107. Reserved	163

CHAPTER 10. LOAN SERVICING, CANCELLATION, REINSTATEMENT AND LOAN MODIFICATION

108. Disaster Loan Servicing Responsibility	165
109. Cancellation	165
110. Reinstatement of Canceled Loan	166
111. Loan Modification	167
112. Increases in Physical Loans	167
113. Reserved	168

CHAPTER 11. ECONOMIC INJURY DISASTER LOANS: POLICIES AND ELIGIBILITY

114. Authority for Economic Injury Disaster Loans (EIDLs)	169
---	-----

Paragraph	Page
115. Legislative Limit on Economic Injury Loan Amount	169
116. Definitions	169
117. Basic Eligibility Determinations	170
118. Independently Owned and Operated Business	171
119. Applicants Generally Eligible	173
120. Ineligible EIDL Applicants	173
121. Other Eligibility Matters	175
122. Eligibility Under Secretary of Agriculture Designations	176
 CHAPTER 12. ECONOMIC INJURY DISASTER LOANS: ANALYSIS AND PROCESSING	
123. Methods of Analysis	179
124. Definitions	179
125. Phase I Method	180
126. Phase II Method	181
127. Phase III Method	183
 CHAPTER 13. ECONOMIC INJURY DISASTER LOANS: TERMS AND CONDITIONS	
128. Loan Terms and Installment Amounts	185
129. Collateral and Guarantee Requirements	186
130. Ineligible Uses of EIDL Loan Proceeds	186
131. Insurance Requirements	187
132. Loan Closing and Disbursement	188

<u>Appendices</u>	<u>Page</u>
1. Index to Forms and Reports	189
2. Acronyms and Definitions	193
3. Reasons for Withdrawal of Application	201
4. Reasons for Decline of Application	203
5. Draft Conditional Commitment Letter (CCL) Codes	207
6. Eligibility of Native Americans (Indians)	209
7. Eligibility of Tribal Owned Businesses	211
8. Ethnic and Gender Codes	213
9. Sample Credit Inquiry Letter	215
10. Reserved	217
11. Disaster Loan Case File Arrangement	219
12. Sample Income Test Table	225
13. ALCS Cancellation Code	227
14. Reserved	229
15. Reserved	231
16. Catalog of Loan Authorization Text	233
17. Nondiscriminatory Membership Compliance Letter	235
18. Instructions for Completion of the SBA Form 140	237
19. Instructions for Completion of the SBA Form 1616	247
20. Instructions for Completion of the SBA Form 1618	261
21. Size Appendix	279
22. Right to Financial Privacy	285
23. Opinion of General Counsel - Equal Credit Opportunity Act	289
24. Credit Elsewhere Guidelines for Disaster Home Loans	295
25. Credit Elsewhere Guidelines for Disaster Business Loans	305

AppendicesPage

26.	The Fixed Debt Method (FDM): Documenting Income and Determining Repayment Ability for Disaster Home Loans	315
27.	Index	331

CHAPTER 1

INTRODUCTION1. AUTHORITY

- a. Section 7(b)(1) of the Small Business Act, as amended, authorizes the Agency's Physical Disaster Loan Program. SBA can make loans to eligible victims of declared disasters as defined by the Small Business Act.
- b. Section 7(b)(2) of the Small Business Act, as amended, authorizes the Agency's Economic Injury Disaster Loan (EIDL) Program. SBA can make loans to eligible nonfarm small businesses and eligible small agricultural cooperatives located in a disaster area that suffered substantial economic injury as a result of the disaster.

2. RELATED RULES, REGULATIONS, AND SOPS

You can find additional program guidance in Title 13 of the Code of Federal Regulations (13 CFR), Part 123, and other Agency SOPs. These are available in the disaster area offices.

3. RESPONSIBILITIES

- a. Associate Administrator for Disaster Assistance (AA/DA).

The AA/DA plans, directs, and administers the Agency's disaster lending programs. The AA/DA's office and staff, located in Washington, DC, comprise the Office of Disaster Assistance (ODA).

- b. The Disaster Area Office.

There are four permanent SBA "Disaster Area Offices" (DAO) nationwide which implement the disaster program under the direction of ODA. Each DAO is responsible for a specific geographic area.

4. CHANGES TO THIS SOP

Disaster loan policies and guidelines cannot anticipate all of the needs that may arise in any given disaster. Therefore, these procedures and guidelines may change without advance notice. ODA notifies Disaster Area Offices of all changes.

5. EXCEPTIONS TO POLICY AND SOP REQUIREMENTS

A policy exception is any recommended action not in full compliance with this SOP. Only the AA/DA can approve exceptions.

6. TYPES OF DISASTER DECLARATIONS AND OTHER ASSISTANCE

There are four types of disaster declarations:

- a. Presidential. This activates SBA's physical and economic injury disaster loan programs. Some other forms of State and Federal assistance available in addition to SBA loans are:
 - (1) Temporary Housing and Mini-Repair Programs (MRP), administered by the Federal Emergency Management Agency (FEMA). (FEMA is the coordinating agency for all assistance.)
 - (2) The Individual and Family Grant Program (IFGP or IFG), a State administered program.
 - (3) Services provided by the American Red Cross (ARC) and other volunteer agencies.
- b. Administrative. This activates SBA's physical and economic injury disaster loan programs. Generally, the only other assistance in addition to SBA is from volunteer agencies.
- c. Secretary of Agriculture (SecAg) and Governor's Certification (7b(2)(D)). These activate SBA's EIDL Program.

7. ATTITUDE OF SBA DISASTER PERSONNEL

The disaster assistance program is customer-driven. The people coming to you for assistance have been through a traumatic experience from which they may not have recovered. You are there to help, not to further discourage them. It is absolutely essential that you exercise tact, compassion and professionalism at all times.

8. AUTHORITY TO APPROVE, DECLINE, OR WITHDRAW LOAN APPLICATIONS

- a. Rule of Two. Loan officer (LO) recommendations require concurrence. If the official who has the authority to take action does not agree with the recommendation, the next higher level of authority must resolve the issue.

¶8

- b. General Limits on Loan Approval Authority.

- (1) Authority to Approve Loans (for any applicant and its affiliates for a single disaster).
 - (a) A supervisory loan officer (SLO) has the authority to approve all disaster loans including loan modifications of up to \$750,000 (see b.(2) below for exception).
 - (b) The area director (AD), the assistant area director for loan processing (AAD/LP) or any SBA employee officially designated as acting in either position has the authority to approve all disaster loans of up to and including \$1,000,000 and subsequent loan modifications that cause the total loan amount to increase up to and including \$1 million.
 - (c) Only the AA/DA, or designee, has the authority to approve loans in excess of \$1,000,000 and subsequent loan modifications that cause the total loan amount to exceed \$1 million. The area office must forward these cases, together with all supporting documentation, to ODA with the recommendation of the AAD/LP through the AD.
- (2) Authority to Approve or Decline EIDL Applications (subject to b.(1) requirements above).
 - (a) Any employee with an SLO delegation may take final action on a Phase I EIDL.
 - (b) Only the following individuals may take final action on a Phase II or Phase III EIDL:
 - (i) A cadre employee after receiving specific authority from the AD or designee; or
 - (ii) A temporary employee after receiving specific authority from the AA/DA.
- (3) Loans to SBA Employees, Service Corps of Retired Executives (SCORE), Active Corps of Executives (ACE), and Advisory Council Members. Applications from these individuals, or members of their household (as defined in 13 CFR 105.201(d) of the Standards of Conduct regulations), may be accepted and processed without a review by the Standards of Conduct Committee as follows.

¶8

Effective Date: April 26, 1999 me Loans.

Effective Date: December 1, 1997

Page 16

- (i) When there is no apparent conflict of interest, the AD or deputy may approve or decline these applications, but before taking final action, should notify the appropriate district director (DD) or regional administrator (RA) of the proposed action.
 - (ii) Where the AD or deputy believes the appearance of a conflict of interest may exist, and, in all cases where the applicant is a disaster employee or a member of the employee's household, the case must be forwarded to ODA for final action. The area's transmittal must outline the conflict (or relationship to the SBA employee) and contain the AD's or deputy's recommendation for final credit action.
- (b) Business Loans. Only the AA/DA can approve or decline these applications. After processing, the file must go to ODA and include the recommendation of the AD or deputy.
- (4) Restoration or Replacement Cost of Real Property Exceeding Predisaster Value. The AAD/LP or an SLO designated by the AAD/LP must approve loans if the allocation to repair or replace disaster damaged real property exceeds the loss verifier's estimate of the predisaster fair market value. This does not apply when the loss is to manufactured housing (MH).
- c. Proposed modifications to loans approved by ODA must be discussed with ODA for consent to final action. ODA may request files for review at its discretion.
- d. The delegating official will notify disaster employees in writing of his/her loan approval and decline authority.
- e. Approval and disbursement of disaster loans is subject to availability of funds.

9. CONFIDENTIAL INFORMATION

- a. Agency Actions.
 - (1) Disaster employees must not reveal to the applicant or the applicant's representative, the name, title, or recommendation of any SBA employee or official pertaining to any Agency decision.

- (2) We will only disclose the Agency's decision. However, upon applicant's specific oral or written request, we can reveal the name and title of the person who signed the final action.

b. SBA Employees to Deal Only With Authorized Representatives.

SBA applications require a listing of anyone retained by an applicant as their SBA representative, and the compensation to be paid. You may only discuss a case with an applicant or someone named in the application or in a letter of authorization as a representative.

10. REFERRAL TO THE OFFICE OF INSPECTOR GENERAL (OIG)

- a. When you have questions about the truthfulness or accuracy of an application or supporting data and information (including tax information), you should refer the case to the OIG. After a case is referred to OIG, and before final Agency action, the field office will not make any statement about actions taken by the OIG, except as permitted by law.
- b. You should immediately report any known or suspected improper activity directly to OIG. This includes program irregularities, misrepresentation, and bribery overtures, attempts, or solicitations. Call the OIG Hotline at (800) 767-0385 or send a written referral to: OIG, 409 3rd Street SW, Suite 7150, Washington, DC 20416. Copies may be sent to supervisory officials in the disaster area office.

11. CONGRESSIONAL INQUIRIES

Congressional inquiries generally go to the area offices and are answered directly, where appropriate. You must send a copy of all congressional inquiries and responses, or a record of telephonic congressional inquiries (use SBA Form 717, "Record of Congressional Inquiry") to the Office of Congressional and Legislative Affairs in SBA Headquarters, ODA, and appropriate district offices. If you receive an inquiry from a congressional office you must refer it to the DAO's Public Information Office.

12. LOAN CASE FILE ARRANGEMENT

- a. File Arrangement. You must keep the file in the order specified in appendix 11.

¶12

- b. Copies of Original Documents. When you receive original documents, either at screening or during processing (deeds, abstracts of title, etc.), make a copy, mark it "copy," and date-stamp the receipt date on the copy. You must keep the copy in the file and return the original(s) to the applicant.
- c. File Documentation.
 - (1) You must not write or mark on original documents received from applicants/borrowers; original document must be copied and date-stamped, as described in subparagraph b. above.
 - (2) You must prepare all reports and other documents in either blue or black ink.
 - (3) You must not use "white-out" or similar materials to make corrections. Instead, you must mark through the entry(ies) to be corrected with a single line and re-enter the corrected information. You must initial and date all corrections.
 - (4) We do not keep drafts in files. Keep only a copy of the final signed and dated document. [Exception: Draft Loan Authorization and Agreements (LAA) are kept in the file.]
 - (5) We do not keep envelopes or similar materials in files. Proper date-stamping eliminates the need to keep envelopes.
 - (6) You must not leave any loose documents in files. Hole-punch and place them in the file folder.
 - (7) You must not issue any official correspondence without a date, printed (or typed) name, signature, and organizational title (not the personnel classification). For example, employees classified as loan specialists or construction analysts should sign documents as loan officer or loss verifier, respectively.
 - (8) You must record on the chronological record (chron sheet or chron log), your name; department; the contents of all conversations with the applicant, the representative, or anyone else (banker, insurance agent, etc.); and include the name and comments of each participant. You must also record unsuccessful attempts to make contact. DO NOT RECORD your personal opinions or your comments out of context.

CHAPTER 2

ELIGIBILITY OF APPLICANTS FOR PHYSICAL DISASTER LOANS13. APPLICANTS GENERALLY ELIGIBLE

Applicant eligibility is subject to the limitations and restrictions in paragraphs 14 and 15.

- a. Applicants Legally Able to Contract Debt. The age at which an individual may legally contract to establish a debt varies among states. You must consult SBA area counsel if the applicant is under 21 years of age.
- b. Businesses of Any Size. There are no size restrictions for physical business disaster loans.
- c. Organizing Businesses. A business that was in the process of starting operations and had purchased fixed assets, inventory, etc., that was subsequently damaged or destroyed by the disaster is eligible. This is true even if that business had not actually "opened its doors" before the disaster occurred. We require documentation to support this "organizing stage," such as:
 - (1) Receipts or contractual agreements for inventory or machinery and equipment purchases; and
 - (2) Advertisements, employment classified ads, etc.
- d. Nonprofit Organizations. Nonprofit organizations, including charitable and religious organizations and condominium or other associations, are eligible (see paragraphs 24 and 25).
- e. Owners of Rental Property. Owners of commercial or residential rental property are eligible for business loans.
- f. Legal and Illegal Aliens. Legal aliens are eligible for disaster loans. Illegal aliens (individuals not lawfully in the United States) are not eligible.

- (1) Home Loan Applicants and Sole Proprietors. We don't ask individuals about their citizenship or alien status on the loan application. You do not need to inquire unless you determine from reviewing the file contents that this should be pursued. For example, the lack of a social security number would prompt such inquiry. Loan approval for documented aliens is a matter of credit just as it is for all other applicants. Use caution when addressing financial stability during the repayment analysis. Applicants who have accumulated property; established themselves in the community; established credit and banking relationships; and paid local, State, and Federal taxes are likely to be relatively stable. The greater the amount of property owned, particularly real property, the greater the probable stability.
- (2) Corporations. Alien-owned corporations properly registered and licensed in the state where the disaster occurred are eligible.
- (3) Partnerships. Alien-owned partnerships properly registered and licensed in the state where the disaster occurred are eligible. If any general partners or limited partners owning 20 percent or more of the applicant are in the USA, they must be lawfully within the country.

g. Owners of Equity in Property.

When an applicant is purchasing the damaged or destroyed property under a contract of sale or similar agreement, both the buyer and the seller may have eligibility for a portion of the disaster damage, as follows:

- (1) When either party to the contract waives their claim for SBA disaster loan assistance, the other party is eligible to apply for a disaster loan in the amount of full eligibility;
- (2) If a waiver cannot be arranged, each party is eligible for their pro-rata share of disaster loan eligibility in proportion to their equity in the property;
- (3) If loan eligibility is split (i.e., both buyer and seller apply for loans in the amounts of their respective equities), the real estate portion of both loans must be used to restore the property;
- (4) You must secure both loans when the combined total is more than \$10,000;

- (5) You must secure any loan to the record titleholder (the seller) requiring collateral by a mortgage on the damaged property; and
- (6) You must secure any loan to the equity owner (the purchaser) requiring collateral by, in order of preference and subject to state law, a mortgage executed by the seller, or purchaser's assignment of the purchase contract and purchaser's interest therein.

h. Purchasers of Damaged Property Subject to a "Contract to Sell."

- (1) Generally, purchasers of disaster damaged property, under a contract to sell negotiated before the disaster and consummated after the disaster without reducing the purchase price to allow for the disaster damage, have eligibility, rather than the seller. You must deduct from eligibility the proceeds of any insurance or other compensation for damages received by either party.
- (2) Purchasers of disaster-damaged property, under a contract to sell negotiated before the disaster and consummated after the disaster with a reduction to the selling price, may have eligibility. The purchaser is eligible to the extent that the damage is not otherwise compensated. You must consider any reduction in the purchase price as compensation, and reduce eligibility accordingly.

NOTE: Purchasers of disaster damaged property which was not under a contract to sell prior to the disaster may be eligible, to the extent that the change of ownership involves other family members, close relatives, partners, officers, or long-time employees. If you justify this change in ownership in the loan officer report (LOR), these applicants retain eligibility (less any compensation/recovery by either the buyer or the seller) even if the disaster damage results in a reduction in the purchase price.

i. Applicants who "Walk Away" from their Mortgage(s) are Eligible.

- (1) In some states, a mortgage foreclosure sale cannot result in a deficiency judgment against the purchaser under a purchase money mortgage. When applicants walk away from their financial obligation(s), the amount of the disaster loan must not exceed their equity (where state laws permit mortgagors to walk away from their obligations). Equity is defined as SBA's estimated pre-disaster fair market value (FMV) of the damaged or destroyed real estate less all recorded liens the applicant can and does walk away from.

- (2) Those disaster victims who can and do walk away from their obligations, regardless of their reasons for walking away, may borrow only the lesser of their net disaster loan eligibility or equity. This also includes situations where the damaged property is deeded back to a mortgage holder, who confirms in writing that there is no further liability on the part of the purchaser.
- (3) Applicants who walk away from their obligations in states which do not permit them to do so retain full eligibility. However, there may be serious credit concerns due to the contingent liability of the debt walked away from. This also includes situations where a private party is the mortgage holder and they refuse to accept the deed or remove further liability from the purchaser.

NOTE: When applicants are permitted to walk away, you must limit eligibility in accordance with the above policy regardless of any other real property eligibility considerations.

For example, an applicant's real property has an FMV of \$200,000 and a first mortgage principal balance of \$175,000. The property is condemned by local authorities and is a total loss under our guidelines. The applicant decides to walk away and the seller agrees to accept the deed with no further liability. In this case, the applicant did not suffer a \$200,000 loss, but rather an equity loss of \$25,000, which represents their maximum eligibility.

j. Beneficial Owners.

- (1) Individual local chapters of eleemosynary (i.e., charitable, nonprofit) organizations having full use of and benefits from, property owned by the parent organization are each eligible for separate SBA physical disaster loans. For example, the American National Red Cross is vested with legal title to the real properties used by the various Red Cross Chapters; however, each chapter raises its own funds, controls the use of the property, and is the "beneficial owner" of the property. We do not combine applications from several Red Cross Chapters (or other similar organizations) as though they were affiliated.
- (2) A mortgagee (mortgage holder) who began legal action against the defaulting property owner prior to the disaster is eligible if all other relevant criteria are met.

k. Non-owner applicants who must repair or replace the damaged or destroyed property are eligible. The two most common non-owner applicants are:

(1) Bailee-for-Hire. This occurs when property owned by one party is physically in the possession of another party at the time of the disaster. You should discuss bailment eligibility matters with counsel.

(a) Bailees include but are not limited to: warehousemen, garage keepers, parking-lot operators, laundries, dry cleaners, automobile and other repair shops, and pawnbrokers.

NOTE: This situation does not apply to property obtained by the pawnbroker following the customer's failure to redeem.

(b) If the bailee is legally liable and will actually compensate the bailor for an uninsured loss of bailed property, the bailee is the one who suffered the loss and has the eligibility to file an application. If not, the bailor is eligible.

(c) In establishing bailee eligibility, the file must include evidence that:

(i) The loss is not covered by insurance from either party;

(ii) The owner is requiring the bailee to pay for the loss; and

(iii) The owner will not file for SBA disaster loan assistance relating to that particular loss.

(2) Tenants. A lease may require a nonowner tenant to repair/replace disaster damages to the owner's real property in addition to the tenant's leasehold improvements. If so, the case file must contain:

(a) A complete, legible copy of the lease in effect at the time of the disaster. If there was no written lease in effect at the time of the disaster, you must obtain a written statement from the lessor indicating the type of arrangement that was in effect at the time of the disaster, and who has responsibility for repairing damage to the real estate, other than leasehold improvements. You should inform the applicant and the lessor that a formal written lease will be required if a loan is approved to repair the real estate damage;

- (b) Documentation that you have reviewed the lease agreement (or written statement of the arrangement in place at the time of the disaster) with Counsel to determine if the appropriate "repair responsibility" clause is specific enough to warrant eligibility (a standard clause merely requiring the property to be maintained in good order does not warrant eligibility); and
- (c) Written verification from the applicant and the owner that the loss is not covered by insurance.

l. Owners of Leasehold Improvements (LHI).

- (1) The lessee (tenant) who owns damaged/destroyed LHI is eligible for the improvements. If the existing lease (including renewal options) does not run as long as the repayment term of the disaster loan, generally SBA will require that the lease be extended to run for the term of the SBA loan and assigned to SBA with right of reassignment.
- (2) In cases where it is not possible or desirable to modify the term of the lease, you must fully document:
 - (a) The likelihood of the applicant continuing in business at the same or different location;
 - (b) The uniqueness of the LHI and their adaptability or need, at a different location; and
 - (c) How such a situation would affect repayment ability.
- (3) Tenant eligibility for real estate or leasehold repairs which are or will be owned by the landlord are site-specific and not transportable to a new location. The Loan Authorization and Agreement (LAA) must reflect this when eligibility is based upon a lease requirement. Conversely, lessees who own LHI are eligible for their repair or replacement, and this eligibility remains if the tenant relocates.

- m. Nurseries. SBA regulations define nurseries as commercial establishments deriving 50 percent or more of their annual receipts from the production and sale of ornamental plants and other nursery products, including, but not limited to, bulbs, florist greens, foliage, flowers, flower and vegetable seeds, shrubbery, and sod. Nurseries are not eligible for physical disaster loans. For purposes of

physical disaster loan eligibility, a business deriving less than 50 percent of annual receipts from the production of nursery products is not agricultural enterprise and is eligible.

n. Owners of Property That is the Primary Residence of Another May Be Eligible.

(1) As business applicants, if:

- (a) The property is held for rental income instead of for the owner's recreation; and
- (b) Qualifies under §280A of the Internal Revenue Code (26 U.S.C.) for deduction of ALL operating expenses.

NOTE: For disaster loan purposes, a qualified rental property is property used predominately for income production instead of the owner's recreation. Generally, properties used by the owner for more than 14 days during the tax year would not qualify as true rentals.

(2) As home applicants, if:

- (a) The individual(s) occupying the home are close family members, life long family friends, long time business associates or employees, or maintain more than a casual relationship with the owner(s); and
- (b) You confirm there has been, and remains, the intent to provide long-term, permanent housing to those individuals. (A short-term occupant in a rent-free vacation home would not as qualify the owner for this exception.)

For example, a son owns and maintains a home for his elderly mother. The mother pays no rent to the son. By definition, the home is the mother's primary residence, but for disaster loan purposes, the son is the eligible applicant since eligibility is tied to ownership, not occupancy. We don't require the occupant to be a joint applicant on a loan to repair the owner's building to establish eligibility. You only include the occupant when necessary for credit considerations. The occupant has separate eligibility for personal property (PP) losses.

- (c) It is possible for one applicant to apply for and obtain more than one home loan for damages resulting from the same disaster. For example, the applicant has damage to their primary residence and damage to the residence occupied by another. If this occurs:
 - (i) You must combine the loan amounts for purposes of determining the secured threshold; and
 - (ii) The combined dollar amount of the loans cannot exceed the administrative limit applicable to a single home loan.

NOTE: If the applicant prefers, one loan may be written.

- o. Native Americans. See appendix 6.
- p. Tribal Businesses. See appendix 7.

14. RESTRICTIONS ON APPLICANT ELIGIBILITY

- a. Equal Credit Opportunity Act (ECOA) in "Community Property" States. In community property states, SBA may not arbitrarily require the signature of a nonapplicant owner or spouse to join in a loan application solely due to marital status or ownership. See appendix 23.
- b. Businesses Considered as Hobbies. Some endeavors constitute hobbies of the owner even though they are organized as a business. As hobbies, they are not eligible for physical loss or EIDL assistance. If you have reason to believe that an endeavor is in fact a hobby, determine if IRS has reviewed the business status. In the absence of an IRS review, you should consider whether the business is properly licensed by appropriate authorities, and whether reasonable efforts have been made to operate as a business rather than a hobby.
- c. Applicant's Character.
 - (1) Felony Committed During a Riot or Civil Disorder or Other Declared Disaster. Home loan applicants or sole proprietorships convicted during the past year of a felony during and in connection with a riot or civil disorder or other declared disaster are not eligible ((1106(e) of P.L. 90-448, Housing and Urban Development Act of 1968 and 13 CFR 123.101(a)). You must decline their application for policy reasons using code 43.

(2) Criminal Arrests/Indictments/Convictions/Parole/Probation. It is not in the public interest for SBA to extend financial assistance to individuals who are not of good character. Applications cannot be approved without appropriate clearance from ODA when the applicant or one of the principals of the business:

- (a) Have records indicating an arrest, indictment, or conviction for a criminal offense; or
- (b) Are currently on parole or probation.

See paragraph 74 for detailed procedures.

d. Production and Distribution of Obscene Material. By statute ((4(e), Small Business Act), we cannot provide assistance to any business concern or other person engaged in the production or distribution of any product or service determined to be obscene by a court of competent jurisdiction.

e. Certification of Compliance with Child Support Obligations.

(1) Home Loan and Sole Proprietor Applicants. By statute, at the time of loan closing, applicants must certify that they are not more than 60 days delinquent in child support under the terms of any administrative order, court order, or repayment agreement (entered into between the individual and the custodial parent or state agency providing child support enforcement services).

(2) Other Business Loan Applicants. The above restriction also applies to certain business principals. If any business principal with a 50 percent or greater ownership interest in the applicant is more than 60 days delinquent in child support under the terms of any administrative order, court order, or repayment agreement (entered into between the individual and the custodial parent or State agency providing child support enforcement services), you can process the application only if that individual(s) will divest all direct and indirect interest in the business. The AD may recommend approval. The AA/DA must take final action.

f. Membership Groups.

(1) Whenever a fraternal organization, country club, civic, or other membership group requests disaster loan assistance, you must immediately notify the applicant in writing that (see appendix 17):

- (a) SBA's regulations apply to their membership policies;
 - (b) Consideration of race, color, religion, sex, handicap, age, or national origin of applicants for membership in the organization would, during the term of the loan, be inconsistent with the non-discrimination requirements of the Civil Rights Act; and
 - (c) SBA will consider as overridden any existing restrictions in the national or local charter, by-laws, or regulations of the organization denying membership because of race, color, or national origin.
- (2) We must be satisfied that enforcement of this nondiscrimination agreement will not result in the local chapter's loss of the national charter or possibly its income from membership fees. The loss of either could destroy the organization's ability to repay.
- (3) The Department of Justice has issued an opinion that these restrictions apply to ethnic, fraternal, or social organizations that use national origin as a membership criteria, such as Sons of Italy, Friendly Sons of St. Patrick, etc., and they are subject to the provisions of Title VI of the Civil Rights Act of 1964. Therefore, they must agree to admit members without regard to national origin as a condition of receiving a disaster loan.
- (4) Exemptions from the Nondiscrimination Requirements Under the Civil Rights Act. These exemptions pertain only to gender discrimination, and apply to:
- (a) Educational institutions of religious organizations with religious tenets contrary to the nondiscrimination law;
 - (b) Educational institutions training individuals for military service or the merchant marine;
 - (c) Social fraternities or sororities which are tax exempt and whose membership primarily consists of students in attendance at an institution of higher education;
 - (d) Certain voluntary service organizations:
 - (i) YMCA;

- (ii) YWCA;
- (iii) Girl Scouts;
- (iv) Boy Scouts; and/or
- (v) Campfire Girls;.
- (e) Boys and girls conferences (the American Legion Boys State, Boys Nation, Girls State, and Girls Nation Conferences), and promotional activities of secondary schools or educational institutions for these conferences;
- (f) Father-son or mother-daughter activities at educational institutions, so long as the activities are provided for students of both sexes; and
- (g) Institutions of higher education scholarship awards in "beauty pageants" as long as the pageant complies with the other nondiscrimination provisions of Federal law.

15. APPLICANTS GENERALLY INELIGIBLE

- a. Purchasers of Disaster Damaged Property are ineligible, including, but not limited to, the following.
 - (1) Businesses. This includes substantial change in ownership, which is defined as a change in ownership of more than 50 percent of the equity. (This restriction does not apply to those transactions described in subparagraph 13.h.)
 - (2) Homes. (The restriction also does not apply to those transactions described in subparagraph 13.h.)
- b. Publicly Owned Institutions and Public Entities. Cities, counties, etc., are ineligible for SBA disaster loans.
- c. Assumption of Risk and Failure to Comply. Applicants who assumed the risk or possibility of loss or failed to comply with the terms and conditions of their prior SBA loans are ineligible.

- (1) Assumption of risk is evidenced by the omission of a required act, such as failure to maintain insurance [see subparagraph (2) below]. This conforms the eligibility for disaster loans to the standards of the National Flood Insurance Program (NFIP) in assessing the risk of loss and mitigating against future floods. Owners of property located between a river and a levee or in a flowage easement are subject to the same restrictions as disaster victims located in any other area of flood risk.
- (2) Failure to Maintain Required Federal Flood or Other Insurance.
 - (a) Recipients of prior disaster loans who did not maintain required Federal flood or other insurance are not eligible for any SBA disaster loan assistance caused by any type of future disaster.
 - (b) For any disaster loan made in 1982 or later (and still outstanding) covering property then located in a special flood hazard area (SFHA), you must assume that flood insurance was required. If there was no flood insurance in effect for property in the SFHA at the time of the current disaster, the applicant is in violation of the LAA and you must decline the application (code 39).
 - (c) This restriction includes subsequent flood damage which exceeds the amount of flood insurance the applicant was required to maintain by the terms of the LAA.
- (3) Compliance With Flood Insurance Requirements of Prior SBA 7(a) or 504 Business Loans. Disaster loan applicants who are not in compliance with flood insurance requirements of existing SBA business loans (e.g., 7(a) or 504) are ineligible. There were variations in procedures related to flood insurance requirements in nondisaster SBA loans and you can't assume that maintenance of flood insurance was a requirement of those loans. When an applicant has an outstanding SBA 7(a) or 504 business loan, the following steps must be taken.
 - (a) You must check with the appropriate SBA district (or other servicing office) to determine what specific flood insurance requirement (if any) was a condition in each loan authorization.

(b) In many cases, a general "if the property is in a flood zone" condition (commonly known as the if/when clause) was included in loan authorizations. You must determine if the borrower was notified by SBA or a participating lender that the property is in an SFHA and that the requirement to purchase flood insurance applies. Evidence of notification can include:

- (i) Documentation in the case file that flood insurance was purchased to satisfy a loan condition; and
- (ii) Evidence that flood insurance was purchased prior to disbursement of the loan.

NOTE: We will treat an absence of any written documentation as a lack of notice and consider the if/when condition satisfied.

(c) When the borrower has complied with the condition of their LAA, or when the available written record is inconclusive, the borrower is otherwise eligible.

(d) When the disaster loan applicant did not comply with the flood insurance condition for a prior loan, they are ineligible.

(4) Failure to Comply With Loan Authorizations. Generally, applicants who did not comply with the terms and conditions of the loan authorization(s) of prior SBA loan(s) (includes unsatisfactory loan repayment experience, failure to purchase and maintain stipulated fire and extended coverage insurance, etc.), are ineligible. You must justify any variance from this general policy.

d. Applicants who do not intend to repair or replace damaged property are ineligible.

e. A Mortgage Holder who both instituted foreclosure action and acquired title after the disaster is ineligible.

f. Owners of Unimproved Real Estate held for speculation, investment, or future development are ineligible. See limited exception at paragraph 26.b.(2).

g. Farmers/Ranchers/Aquaculturists.

- (1) By statute (PL 99-272) SBA may not provide disaster loans to agricultural enterprises. A business may be primarily an agricultural enterprise but also have a non-agricultural, separable component. The non-agricultural venture may be eligible for a business physical disaster loan regardless of the "primary" activity of the overall business structure or affiliated group. To be eligible, the non-agricultural venture must be a separable operation and not just part of the agricultural enterprise, with separable and distinguishable income, operations, expenses, assets, etc.
- (2) Section 18(b) of the Small Business Act defines agricultural enterprise as those businesses engaged in the production of food and fiber, ranching and raising of livestock (including feedlot operators), and all other similar farming and agriculture-related industries. This definition is not limited to products for human consumption. Most agricultural enterprises fall into major groups 01 or 02 and parts of 08 and 09 of the Standard Industrial Classification (SIC) Manual.
- (3) Aquaculture is defined as husbandry of aquatic organisms under a controlled or selected environment (fish farms). An aquaculture operation is ineligible if it is engaged in husbandry of aquatic organisms on grounds which the applicant owns, leases, or has an exclusive right to use. Exclusive use-rights are usually documented by a lease or a permit specifically identifying the waters available for the applicant's use. For example, oystermen who seed private grounds which they own or rent are engaged in aquaculture and are ineligible. Public ground oystermen, however, who do not have exclusive use of any area, do not farm and are eligible.

h. Concerns Engaged in Illegal Activities.

i. Concerns Engaged in the Sale of Products or Services or Live Performances of a Prurient Sexual Nature.

16. RESERVED.

¶16

CHAPTER 3

ELIGIBILITY OF PROPERTY FOR PHYSICAL DISASTER LOANS17. GENERAL ELIGIBILITY RULE

Generally, property damaged or destroyed by a declared disaster is eligible. However, certain statutory, regulatory, and SOP restrictions and limitations apply. Individual disaster offices and employees must not impose limits or restrictions not provided by statute, regulation, or this SOP.

18. LOCATION OF PROPERTY

The applicant's property must have sustained damage while located within the geographic area identified in the disaster declaration.

- a. Victims whose primary residence is mobile such as a boat, motorhome, or travel trailer are eligible if the residence was located within the declared area at the time of the disaster.
- b. A traveler's personal property temporarily located in a declared area at the time of the disaster is eligible.

19. PRIMARY RESIDENCE ELIGIBILITY

Although some applicants may have more than one residence, for SBA disaster loan eligibility purposes, an applicant can have only one primary residence [see limited exception at subparagraph 13.n.(2)].

- a. Determination of a Primary Residence.
 - (1) For either a homeowner or a renter, a damaged residence (e.g., house, apartment, condominium, manufactured home, etc.) is eligible only if it is the applicant's primary residence.

- (2) Generally every applicant has only one primary residence. This becomes an eligibility issue when the applicant owns more than one piece of real property, or rents more than one apartment or home simultaneously. In these cases, the information in the loan application package will frequently provide the necessary explanations. For example, if an application indicates ownership of two residences, but one of them is clearly substantiated by Federal Income Tax Returns (FTR) as rental income property, no further inquiry is necessary to establish the other home as the primary residence. However, if you cannot readily determine which is the applicant's primary residence use the following factors.
- (a) An applicant has filed for homestead exemption or similar filing in those states that permit these filings. Similarly, in some tax jurisdictions, an applicant's home may be taxed at a preferred rate based on owner-occupancy status which confirms primary residence status.
 - (b) Address used for voting purposes.
 - (c) Address used for identifying the school district to which children are assigned.
 - (d) Address used on FTR.
 - (e) The residence used the greatest percentage of the year.
 - (f) Other similar factors.
- b. Mixed-use structures. When an owner of a mixed-use structure occupies a portion or unit as their primary residence, you must process the damage to the owner-occupied unit as a home loan. You must process the remaining portion(s) or unit(s) under business loan criteria.
- c. Primary Residence Located on a Farm. A primary residence located on a farm is eligible. All home loan criteria apply to these applications (see paragraph 21).

20. RESERVED

21. AGRICULTURAL PROPERTY ELIGIBILITY

Agricultural property is not eligible. However, the applicant's primary residence, personal property contained therein, and access road to the residence are eligible under home loan criteria (see subparagraph 32.h.).

22. REPAIR OR REPLACEMENT COST ELIGIBILITY FOR STRUCTURES

The purpose of physical disaster loans is to return the victim's property as nearly as possible to its pre-disaster condition (within statutory, regulatory, and policy limitations described in this SOP). Generally, the dollar eligibility for structures is the cost to repair or replace the underinsured or uncompensated damage.

- a. Types of Structures. Generally all structures and buildings are eligible. For home loans, non-dwelling type structures such as garages, storage sheds, guest houses, etc., whether attached or detached, are eligible (see limitations at paragraphs 27 and 33). Similarly, for business loans, most structures and outbuildings are eligible unless specifically limited.
- b. Types of Repair or Replacement Costs. Costs associated with repair or replacement of disaster damaged structures are either direct or indirect. The Loss Verification Department is responsible for determining these costs. You must have a thorough understanding of why certain costs are or are not included in the disaster loan and be able to clearly explain this to the applicant.
 - (1) Direct Costs. In addition to the actual costs to physically repair the property, there may be other costs associated with rebuilding such as code required upgrades.
 - (2) Indirect Costs and Expenses. Certain other costs and expenses associated with repairing or replacing structures are eligible. Often these were not known to the LV at the time of the original site inspection and were not included in the LV's report. Examples of indirect costs include: engineering fees, survey costs, architectural fees, etc. If known at the time of processing, you may include these expenses in the loan amount. If discovered after loan approval, you may increase the loan. You must consult with the appropriate department before including any indirect costs in the loan amount.

- c. Costs in Excess of Pre-Disaster FMV. The AAD/LP, or an SLO designated by the AAD/LP, must approve all cases where the recommended loan amount for structural repair or replacement exceeds the pre-disaster FMV (with the exception of manufactured housing used as residences).
- d. National Register of Historic Places. You must seek supervisory guidance prior to processing buildings or structures included in or eligible for the National Register of Historic Places.
- e. Special Provisions Applicable to Rental or Investment Properties. If the pre-disaster FMV of a rental or investment property (not owner-occupied residences or commercial real estate occupied by the owning business or an affiliate) is depressed because of factors other than the disaster itself (e.g., substantial deferred maintenance), eligibility cannot exceed the pre-disaster FMV. This restriction avoids providing subsidized disaster funds on favorable terms to owners who have not adequately maintained their property. It also accounts for otherwise depressed economies and real estate markets. This exception applies regardless of whether the owner intends to repair, replace, or relocate. (Owner-funded upgrades or improvements are permitted.)
- f. Deferred Maintenance. The LV will address deferred maintenance during the on-site inspection. Minor deferred maintenance which must be dealt with in order to make disaster repairs is eligible. However, other deferred maintenance is not eligible. You must rely upon the LV report when establishing eligibility in these cases.

23. MANUFACTURED HOUSING (MH) ELIGIBILITY

- a. Use of Manufactured Housing.
 - (1) MHs used as the applicant's primary residence are processed under home loan criteria.
 - (2) MHs held for resale are inventory and processed under business loan criteria.
 - (3) MHs used for rental income purposes are processed under business loan criteria.

- (4) MHs used for any other purpose(s) may be eligible depending on the specific use. For example, a manufactured home used by a construction company as its on-site office would be eligible because of its usage. MHs used for vacation or recreational purposes would not be eligible.
- b. Eligibility of Totally Destroyed MHs. The LV will assign a replacement cost based upon square footage when an MH is totally destroyed.
- c. Documentation Required.
 - (1) Requirement for MH Title. We require a copy of the title to the damaged MH to establish proof of ownership unless it is permanently attached to the land in which case it may not be titled. When taking the damaged MH as collateral, no other proof of ownership is acceptable. However, when not taking the damaged MH as collateral (e.g., the loan is unsecured or the damaged MH is totaled and only the replacement will be taken), and the applicant(s) cannot provide a copy of the title after making reasonable effort, the following substitutes are acceptable:
 - a. Current registration (in States or counties where required by law); or
 - b. Current tax receipt or bill, in the name of the applicant. The tax bill or receipt must specifically identify the damaged or destroyed MH.

NOTE: Generally doublewide MHs will have separate titles for each section.

- (2) Other Documentation Requirements.
 - a. We require a legible copy of the lease if the damaged MH is/was located on leased land. If no lease exists a letter from the landlord confirming the location will suffice.
 - b. We require a copy of the deed if the damaged MH is/was located on land owned by the applicant.

24. CONDOMINIUM ELIGIBILITY (INDIVIDUAL UNITS AND CONDOMINIUM ASSOCIATIONS)

Condominiums present unique issues which require different methods for establishing property eligibility and special provisions and considerations during processing. Any application where the damaged property is a condominium (individual unit or association-owned or common areas) should be identified and handled separately from the onset.

- a. Distinguishing Individual Unit Owners from the Association. Counsel must review all pertinent documents, including the association's Conditions, Covenants, and Restrictions (CC&Rs), Articles of Association, and applicable State or local laws to ascertain the rights and responsibilities of the condominium association and individual unit owners.
- b. Individual Unit Owners are eligible to apply for the damages to their own units. The loan classification (home or business) depends on whether the unit is owner-occupied as a primary residence or whether it is used for business purposes (such as a rental). Units classified as secondary homes are ineligible.
 - (1) Generally, each area office will implement procedures to promptly identify any condominiums located in the disaster area. A group of designated LOs should process all individual unit owner applications from a particular condominium association.
 - (2) Because of the potential overlap of the individual unit owners' damage with that of the association-owned portions of the property (e.g. interior/exterior wall, interior ceiling/exterior roof), before processing begins you should have an understanding of how the entire condominium complex will be repaired or replaced.
- c. General Eligibility Rule.

If you process loans to individual unit owners before the association determines how it will fund repairs to the common area, we will fund only the borrower's personal property and unit repairs. In these cases, the following condition must appear in the individual unit owner's LAA:

"Prior to any disbursement of loan funds for real estate repair, Borrower will provide written evidence satisfactory to SBA that Borrower's repairs will not be damaged or destroyed when the association makes repairs to the common area. Borrower may meet this condition by submitting a letter from the association, or its structural engineer, confirming same. Borrower may also meet this condition by delaying Borrower's repair of the unit until after the association has completed repairs to the common area."

- (1) When the LV report indicates the individual units can be made habitable with only minor interior repairs, proceed with processing these individual unit owner loans. However, when major interior and exterior repairs are necessary and individual units cannot be made habitable without the association being involved in the rehabilitation process, individual unit owners generally cannot be considered for anything other than personal property eligibility until the association meets and agrees on a formal course of action.
- (2) If the association chooses not to apply for an SBA loan and instead passes a one-time assessment to unit owners equal to the amount necessary to make common-area repairs, the unit owners are eligible for their pro-rata shares of the amount of the assessment as well as for the interior damages to their individual units and personal property (PP), subject to program lending limits.

d. The Association. The condominium association is generally eligible to apply for damages to areas of common ownership, such as hallways, parking areas, sidewalks, driveways, grounds, pools, etc.

- (1) We classify applications from condominium associations as business loans (usually as nonprofit organizations), unless specified otherwise by their articles of association. We require the following documentation to process an association's application:
 - (a) A complete copy of the CC&Rs;
 - (b) A complete copy of the by-laws and/or articles of association;
 - (c) A copy of the resolution duly authorizing the association to apply for an SBA loan;
 - (d) A complete list of names, addresses, and telephone numbers of unit owners and directors; and

- (e) A copy of annual reports and operating budgets for the past 3 years.
 - (2) Prior to disbursement of any SBA loan funds, the association must inject any net insurance proceeds or any other funds necessary to complete the repairs.
- e. Collateral Requirements.
 - (1) Individual unit owners are subject to the same collateral requirements as any other physical disaster loan recipient.
 - (2) The Association. We secure loans to associations by taking both of the following:
 - (a) A mortgage or deed of trust on the common areas owned by the association, as permitted by law; and
 - (b) An assignment of a special assessment passed by the association in accordance with its by laws, unless prohibited by law. (The association must assess each unit owner in an amount sufficient to provide loan repayment.)
- f. Special Provision for Calculating Eligibility for Refinancing. Individual unit owners are eligible for refinancing. For the substantial damage calculation, the market value or replacement value of an individual condominium unit is not limited to the value of the internal space of the particular unit. It includes the proportional share of the condominium's common assets, such as buildings, amenities, etc. This calculation must reflect the individual unit owner's proportional share of any net recovery under the condominium association's master insurance policy (see paragraph 36.h.).

25. OTHER ASSOCIATION ELIGIBILITY

Other associations include, but are not limited to, Planned Unit Developments (PUDs), Cooperative Associations (Co-ops), Road Associations, Water Associations, etc. Counsel should review applications from other types of associations to assist you in determining who the eligible parties are, and, in Presidential declarations, the best course of action to pursue for assistance.

- a. Basic Eligibility Considerations. Eligibility rests with those who owned the damaged or destroyed property at the time of the disaster.

- (1) Formal (legal) Association Exists. If a legal entity owns the damaged property, the entity is the eligible applicant (e.g., The Happy Valley Water Well Association, Inc.). You process the application in the same manner as a condominium association.
- (2) Formal (legal) Association Does Not Exist. Property owners who share legal responsibility for repair with one or more other property owners, but had not formed an association at the time of the disaster, may apply as individuals; or they may elect to form an association in accordance with State law and apply as an association, even though the legal formalities are not yet complete.

(a) For applications as individuals:

- (i) Use a home loan application when the shared responsibility for repair is related to the applicant's primary residence;
- (ii) Use a business loan application when the shared responsibility for repair is related to the applicant's business or rental property;
- (iii) Prior to approval, all applicants with common responsibility must have fixed the liability proportionally among those legally responsible for the cost of the repairs, by contract or some other legally enforceable method; and
- (iv) A list of names and addresses of all who share in the responsibility for repairs should accompany the application.

(b) For applications as an association formed after the disaster:

- (i) The newly created association must complete its legal formalities prior to loan approval; and
- (ii) A list of names and addresses of all members must accompany the application.

b. Eligibility for Common Road Damage. SBA eligibility and the handling of applications to repair common road damage will depend on the disaster declaration.

- (1) In Administrative declarations SBA is generally the only form of assistance available to repair common road damage.

- (2) In Presidential declarations applicants should first be referred to FEMA or other appropriate agencies.

26. LAND ELIGIBILITY

- a. Land Associated with a Primary Residence or Business Operation. Damages to land and soil are eligible. Most damage of this type is caused by flooding or other forms of moving water. Soil washouts and similar damages caused by excessive rainfall and flooding are eligible provided the cause is a direct result of the specific declared disaster. However, erosion or similar damage is not eligible, because it occurs over time and is not the direct result of any single declared disaster event. We limit eligibility to the cost of restoring the land to its pre-disaster condition (for exception regarding necessary protective devices, see paragraph 40).
 - (1) If you determine land damage caused by a specific disaster is eligible, you must consider the potential for recurring or continuing damage. You may approve funds to restore land damage if:
 - (a) A shoreline or waterway boundary is stable to the point that future water damage is not likely to occur as the result of high tides, wind-driven water, wave action, or stream flows which might reasonably be expected but which would not constitute a new disaster declaration; or
 - (b) The victim has used other resources to fund the installation of protective devices which will prevent expected high tides, wind-driven water or wave action, or stream flows from causing further land damage. In some cases, the cost of protective devices is eligible, as provided in paragraph 40.
 - (2) Damage to land improvements is eligible unless specifically excluded or subject to the landscaping limitations described in paragraph 27. Some examples of eligible land improvements are: paving, walkways, driveways, fences, retaining walls, septic systems, drainage systems, culverts, and various protective devices.
- b. Unimproved Land.
 - (1) General Rule. Unimproved land is not eligible for disaster loan assistance. This includes land held for speculation, investment, or future development.

(2) Exceptions to the General Rule.

(a) Home Loans. The usual test of an eligible primary residence is occupancy, but an owner of a lot (generally not larger than an acre unless required by zoning laws) may be eligible for a home loan depending on the circumstances. For example:

(i) A lot owner may be a renter residing nearby and actively engaged in the construction of a residence at the time of the disaster loss. The residence may already be under construction; or the land owner may have already incurred expenses for plans, obtained the necessary permits, or engaged a contractor to commence construction. If the disaster loss is to the property where the owner was currently and actively in the process of establishing permanent residence and where the applicant has no other permanent residence (as would be the case for a renter in this example), the property is eligible.

(ii) The same result might occur when the lot owner previously lived and was employed elsewhere, recently was transferred, and purchased a lot and has taken steps to initiate the construction process, and has begun selling the previous residence or converting it to business property.

(b) Business Loans. Ownership of unimproved land actually used in the operations of a business concern rather than land held for investment, speculation or future development purposes may be eligible. For example:

(i) A business whose established activity is buying and selling unimproved land or developing it for resale or rent (a developer) may own unimproved land. Since this activity is an integral part of normal business operations, damage to unimproved land is eligible. Usually, a business concern engaged in an activity involving ownership of unimproved land is readily distinguishable from an individual or group holding ownership of land for other purposes.

(ii) A business may own an unimproved lot on which construction of a new facility is underway. Evidence of the building process includes building permits, architect's plans, engineering studies, or other preliminary steps.

27. LANDSCAPING ELIGIBILITY

- a. Definition. As used in this paragraph "landscaping" includes the replacement of trees, shrubs, hedges, sod, private swimming pools, and private tennis courts (and items or structures associated with their use, such as a cabana used as a bath house).
- b. General Rule. Eligibility for disaster damaged landscaping is limited to the lesser of the verified loss to landscaping or \$5,000. This limitation applies to both residential and commercial property. Normally, trees, shrubs, hedges, etc., will be replaced with saplings or young bushes and shrubs. There will seldom be any justification for using mature plantings as replacements. Docks, boat houses, and any related facilities generally used for recreational purposes are also subject to the landscaping limits.
- c. Exceptions to the General Rule.
 - (1) The limit does not apply to docks and other related facilities when water transportation to and from the primary residence is necessary.
 - (2) Detached buildings such as garages, storage sheds, guest houses, etc., which are not predominantly used for recreational purposes are normally eligible, together with the main house itself, subject to the administrative limit.
 - (3) Business Applicants whose disaster damaged landscaping fulfilled a functional need or contributed toward the generation of business are not subject to landscape limits. For example:
 - (a) A row of trees that constituted a windbreak;
 - (b) The plantings in an atrium or solarium used by patients in a facility providing medical care for the public; or
 - (c) Swimming pools, tennis courts, squash courts, handball courts, etc., when the damaged facility constitutes an integral part of the plan to attract business (e.g., hotel, motel, resort, etc.).
 - (4) Other Exceptions. The following are not included in the landscaping limits:

- (a) Fill for disaster washouts (as opposed to long-term erosion from natural causes) that must be replaced and is part of the damage to land;
- (b) The cost of clearing downed trees, shrubs, hedges, etc. (if not done by the community, Corps of Engineers, etc., as part of the total disaster cleanup); and
- (c) Minimal ground cover (if the most practical and feasible method for necessary ground stabilization).

28. VEHICLE ELIGIBILITY

a. Definitions.

- (1) Vehicle means any automobile, truck, tractor-trailer, van, mini-van, motorbike, motorcycle, or other form of motorized ground transportation.
- (2) Recreational Vehicle (RV) means any motorhome, camper, truck, van, motorbike, motorcycle, all-terrain vehicle, or any other form of transportation used primarily for recreation or relaxation.

b. General Rule. Vehicles (without limit as to number) are eligible subject to the provisions and limitations of this paragraph.

c. License Requirements. Vehicles which were not properly licensed at the time of application are not eligible. "Not properly licensed" means the vehicle could not be legally operated on public highways.

d. Exceptions to the General Rule.

- (1) Unlicensed Vehicles. An unlicensed vehicle may be eligible as follows:
 - (a) Where limited or special use does not require licensing (e.g., a bus used to shuttle workers exclusively within the confines of a plant or job site; or a vehicle used exclusively on an Indian reservation for commuting);
 - (b) Where the vehicle(s) are inventory of a business applicant; or
 - (c) Where the vehicle was held for its scrap value.

(2) Recreational Vehicles.

- (a) A recreational vehicle, such as a motorhome or a camper, may be considered eligible for home loan assistance if it is the applicant's primary residence.
- (b) A recreational vehicle, such as a boat or a snowmobile, may be considered eligible for home loan assistance (as personal property) if it is the applicant's only method of accessing their primary residence.
- (c) Recreational vehicles may be considered eligible for business loan assistance (as machinery and equipment) if:
 - (i) All expenses connected with the operation of the vehicle, including depreciation and maintenance costs, are deducted as business expenses on the FTR, or
 - (ii) The vehicle(s) qualify as inventory of a wholesale or retail business concern.

29. VESSEL AND AIRCRAFT ELIGIBILITY

This paragraph addresses eligibility of commercial boats, ships, vessels, and aircraft. All other noncommercial and recreational crafts are either not eligible or subject to limits in paragraphs 27 and 28.

- a. General Rule. Subject to the provisions of this paragraph, commercial vessels and aircraft are generally eligible under business loan criteria if they were licensed by the proper authority for commercial use at the time of the disaster.
- b. Vessel. A vessel must be properly registered in the state where it is operated and utilized in a commercial activity at the time of the disaster. If the state registration does not identify the authorized use of the vessel, you must use other verification such as tax returns, receipts for sale of the catch, etc. If the vessel is documented with the U.S. Coast Guard, the authorized use is listed on the documentation papers.

- c. Aircraft. An aircraft must be properly registered (licensed) with the Federal Aviation Administration (FAA), have a current and valid "Certification of Airworthiness" (issued by the FAA), and be utilized in a commercial activity at the time of the disaster. In all cases the FAA will identify the authorized use of the aircraft.

30. HOME LOAN PERSONAL PROPERTY (PP) ELIGIBILITY

- a. General Rule. Eligibility for PP losses rests with the individual(s) who owned the damaged or lost property at the time of the disaster. Generally no upgrading is permitted.
- b. Definitions.
 - (1) Personal Property (PP). For disaster home loan purposes, PP means ordinary household contents, such as furniture, appliances, clothing, etc., including eligible vehicles, which the applicants would normally take if they moved.
 - (2) Household. For disaster loan purposes, a household is defined as all persons residing in the dwelling who are claimed as dependents on the applicant's FTR. For example, college students living full time in their parents' home do not have separate eligibility for losses to their PP if they are dependents on their parents' FTR. However, if students living full time with their parents are not claimed as dependents on their parents' FTR, they have eligibility similar to unrelated tenants. The LV must determine that there is no duplication of PP eligibility within the household.
- c. Limitations. Nonessential or atypical items (e.g., extraordinarily expensive, irreplaceable or luxury items, or uncommonly large quantities of ordinary items) may have limited eligibility based on functional or ordinary value or quantity. LV makes these determinations and applies appropriate limitations. The LV will indicate both the verified loss and the eligible amount for each item.
 - (1) Functional Value. For very expensive or luxury items with functional use, eligibility is limited to the cost of an ordinary item meeting the same functional purpose. For example, a fur coat would be replaced with a cloth coat.
 - (2) Quantities. For very large quantities of ordinary items, eligibility is limited to the replacement cost of ordinary quantities.

- (3) Items with Limited Eligibility. Items with limited eligibility include, but are not limited to:
 - (a) Antiques;
 - (b) Expensive or rare artwork, objects of art, or collections;
 - (c) Expensive or extensive wardrobes or clothing collections, including furs (Items essential to the applicant's occupation, such as actor or model, are not subject to this limitation);
 - (d) Collections of otherwise commonplace items (books; musical equipment, tapes or compact discs; audio or visual equipment or tapes; sports equipment, guns; etc.). Items essential to an applicant's occupation (attorney, writer, photographer), are not subject to this limitation (see paragraph 31);
 - (e) Alcoholic beverages (maximum \$250 per application).
- d. Ineligible Personal Property. Some PP items are ineligible. Examples include, but are not limited to:
 - (1) Cash, including coin collections; lottery tickets; stocks; bonds; and other negotiable instruments;
 - (2) Recreational vehicles as defined in subparagraph 28.b.(2);
 - (3) Pets and other animals; and
 - (4) Hobby items which have little or no functional value, such as stamp collections, butterfly collections, autograph collections, etc.

31. BUSINESS CONTENTS ELIGIBILITY

Eligibility for business contents rests with the person or legal entity who owned the damaged or lost property at the time of the disaster. [See possible exceptions in subparagraph 13.k.(1)]. For disaster loan purposes, business contents means any machinery and equipment (M&E), inventory, furniture and fixtures (FF), or office equipment damaged or destroyed by the disaster. Replacement of business contents must be, to the extent possible, of the same quality and capacity as the property lost (no upgrading is permitted).

¶31

32. INELIGIBLE PROPERTY

The following property is not eligible for disaster loan assistance.

- a. Condemned Structures. Any structure, residential or commercial, condemned or refused an occupancy permit by the proper authority before the disaster occurred.
- b. Secondary Homes. Secondary homes such as vacation homes, cabins, cottages, chalets, and their contents, which are used for leisure and enjoyment by the owner.
- c. Any structure, including a boat house, located seaward of mean high tide, or entirely in, on, or over water, and which was constructed or substantially improved after February 9, 1989, is not eligible without an established business need.
- d. Publicly Owned Property. Public roads, highways, bridges, municipal buildings, etc.
- e. Property Not Located Within the Disaster Area. Any property not located within the declared disaster area at the time of the disaster.
- f. Coastal Barrier Islands. The Coastal Barrier Islands Resources Act prohibits financial assistance for any purpose within the Coastal Barriers Resources Systems (CBRS). The only loans permitted are for PP of transients or short term tenants (e.g., vacationers). Maps of the specific CBRS are available from the Department of the Interior.
- g. Seasonal Occupancy on Leased Land.
 - (1) General Rule. Lessees who are only permitted to occupy their dwellings on a seasonal or recreational basis are ineligible. This also applies to MHs situated on leased land and vessels moored in a leased slip where the lease does not permit occupancy as a full-time primary residence.
 - (2) An exception occurs when the lessor acknowledges in writing that:
 - (a) The lessee was not in compliance with the lease provision for only seasonal or recreational occupancy prior to the disaster; and
 - (b) The lessor had chosen not to enforce the lease restriction; and

- (c) The lessee is and will be permitted to continue to occupy the dwelling, MH, or vessel as a permanent, year round primary residence.
 - (3) Approval under this exception requires:
 - (a) A copy of the lessor's written declaration in each case file; and
 - (b) Final action by the AAD/LP or higher.
- h. Agricultural Enterprises.
 - (1) Businesses primarily engaged in agriculture are not eligible. However, a business may be primarily an agricultural enterprise, but also have a non-agricultural, separable component. The non-agricultural venture may be eligible for a business physical disaster loan regardless of the "primary" activity of the overall business structure or affiliated group. To be eligible, the non-agricultural venture must be a separable operation and not just part of the agricultural enterprise, with separable and distinguishable income, operations, expenses, assets, etc. Disaster loan proceeds may not be used to repair or replace physical agricultural losses.
 - (2) A business which is primarily engaged in an eligible activity and secondarily engaged in an agricultural enterprise is prohibited by regulation from using disaster loan proceeds to repair/replace physical agricultural losses.
 - (3) As used in (1) and (2) above, the business includes the applicant business and its affiliates. For sole proprietorships, see also subparagraph 117(b)(2).
- i. Nurseries. Nursery farms are not eligible. (See subparagraph 13.m. and for EIDL, see subparagraph 121.b.).
- j. Property Located in a SFHA within a "Nonparticipating" Community or a Community "Under Sanction." Small Business Administration funds may not be used to repair or replace real or personal property located in an SFHA within a nonparticipating community or a community under sanction. In these communities, Federal flood insurance is unavailable and borrowers can't purchase the statutorily required flood insurance. However, relocation assistance is available.

k. Property Covered by Notice of Disqualification.

- (1) If a notice of disqualification of flood-prone property was previously filed of public record, the property is ineligible. However, the AA/DA, AD, or their designee may remove the ineligibility upon notice from the Flood Insurance Administration (FIA) of the following:
 - (a) Adequate flood control measures have been completed and the property is no longer flood-prone; or
 - (b) Property improvements on the land were constructed after the community started participating in the FIA flood insurance program and both layers of flood insurance may be purchased.
- (2) If the ineligibility is removed, the area counsel may issue to the present property owner an instrument canceling the original recorded notice of disqualification. This instrument becomes effective when recorded in the local land records office where the recorded notice of disqualification was filed.
- (3) Notices of disqualification covering property located within an identified M or E Zone may be similarly treated (see subparagraph 51.a.(4)).

33. LIMITED-USE ELIGIBILITY

If an otherwise eligible structure (primary residence or commercial building) was utilized for purposes other than its intended or customary use, we limit eligibility to the lesser of the current or intended use. Thus, if the structure was excessive in size or quality for the use it had at the time of the disaster, it will be restored only to the current use. For example, a cottage or house appurtenant to a primary home was being used for storage purposes. Loan eligibility to repair that structure is limited to the lesser of the cost of a similar sized storage unit or its intended use as a cottage.

34. RESERVED

35. RESERVED

¶35

CHAPTER 4

ADDITIONAL ELIGIBILITY: REFINANCING, RELOCATION, MITIGATION36. REFINANCING

Refinancing is available to help create repayment ability. When a property is substantially damaged, refinancing of recorded liens can make the additional disaster debt more affordable.

- a. General Rule. By statute, all or part of all loans secured by recorded liens on homes or business concerns substantially damaged by the disaster may be refinanced with additional disaster loan proceeds.
 - (1) Home Loans. We can only consider the eligible R/E (primary residence of the applicant, including MHs, individual condominium units, and houseboats) for refinancing.
 - (2) Business Loans. We can only consider the eligible R/E or M&E which is essential to the operation of the business for refinancing. Property used by the applicant business in a manner which is analogous to M&E is treated similarly for this purpose (e.g., furniture, carpets, drapes, linens, appliances, etc., in a hotel or motel).
 - (3) Nonprofit Organizations. Nonprofit organizations are not eligible for refinancing because they do not meet the definition of business concern as defined in 13 CFR 121.105.
- b. Definitions.
 - (1) Uncompensated Damage means the SBA verified physical loss to the property in question (regardless of legislative or administrative limits) less any insurance or other recoveries.
 - (2) Fair Market Value (FMV) is based upon local market conditions and is what the property would sell for 1 day before the disaster occurred.
 - (3) Replacement Cost means the cost to completely reconstruct the damaged structure and restore the entire property to its pre-disaster condition.

- (4) Substantially Damaged means uninsured or otherwise uncompensated damage of either:
- (a) For homes: uninsured or uncompensated damage which, at the time of the disaster, is either:
 - (i) Forty percent or more of the home's market value or replacement cost at the time of the disaster, including the value of any land, whichever is less; or
 - (ii) Fifty percent or more of its market value or replacement cost at the time of the disaster, excluding the value of any land, whichever is less.
 - (b) For businesses: uninsured or uncompensated damage which, at the time of the disaster, is either:
 - (i) Forty percent or more of the aggregate value (lesser of market value or replacement cost at the time of the disaster) of the damaged real property (including the value of any land) and damaged machinery and equipment; or
 - (ii) Fifty percent or more of the aggregate value (lesser of market value or replacement cost at the time of the disaster) of the damaged real property (excluding the value of any land) and damaged machinery and equipment.
- c. Applicant Eligibility Requirements for Refinancing. By statute, applicants must meet three requirements to be eligible for refinancing consideration:
- (1) The applicant's property must be substantially damaged;
 - (2) The applicant must not have credit available elsewhere; and
 - (3) The applicant must repair or replace the damaged property.
- d. Liens Eligible for Refinancing. Liens subject to refinancing must have existed prior to the disaster. The actual position (i.e., first, second, etc.) and original purpose of an otherwise eligible lien has no effect on refinancing eligibility.
- (1) For real property in both home and business loans, only debts secured by a recorded mortgage, deed of trust, or similar instrument are eligible.

- (2) For M&E in business loans, only debts secured by a recorded security instrument are eligible. For blanket liens where you can't distinguish which portion of the lien relates to M&E, refinancing may be offered if all other relevant criteria are met.

e. Liens Not Eligible for Refinancing.

- (1) Any mortgage or other lien owned by a Federal, State, or local government agency.

NOTE: Liens are eligible when the private debt is insured or guaranteed by a Federal agency (provided the private lender owns the debt and it has not been repurchased or otherwise assumed by the Federal agency). We don't consider the Resolution Trust Corporation (RTC) and the Federal Deposit Insurance Corporation (FDIC) Federal agencies for this purpose. An SBA guaranteed debt is eligible for refinancing as long as the debt has not been repurchased or is not owned by SBA. In addition, state housing finance authorities which, pursuant to Federal law, fund such mortgages or liens by issuing Federal tax exempt mortgage bonds for the purpose of encouraging home ownerships for low and moderate income families, are not considered a state agency for this purpose.

- (2) Liens due to unpaid taxes, mechanics liens, or similar attachments.
- (3) Liens on business inventory (payments on liens on inventory may be appropriately addressed with EIDL assistance).

f. Interim/Bridge Loans. We do not consider repayment of these loans refinancing.

g. Amounts and Dollar Limitations of Refinancing. By statute, refinancing eligibility must not exceed:

- (1) Homes. The lesser of the amount owing on the lien(s) to be refinanced (plus any prepayment penalty), or the amount of the eligible physical loss to the R/E.
- (2) Businesses. The lesser of the amount owing on the lien(s) to be refinanced (plus any prepayment penalty), or the amount of the eligible physical loss to the R/E and M&E.

- h. Calculation of Substantial Damage. Your initial calculation is based upon figures in the LV report. You may need to adjust these figures for insurance or other recoveries. Adjustments may also be necessary because the LV report may not reflect the fair market values of all the applicant's property, which may include undamaged property as well.
- (1) Components of Final Calculation (Homes). You must not include any property adjacent to the damaged primary residence in the calculation if the other property has a separate deed.
 - (2) Business Loans. The determination of substantial damage pertains to the applicant business, not just to the damaged property. You must consider each business applicant as a single entity. You do not aggregate with its affiliates for this purpose.
 - (a) Exception for Sole Proprietors (Including Multiple Rental Properties). If one of the ventures or locations sustained substantial damage, but the others suffered little or no damage, you can establish eligibility for refinancing for the damaged ventures or locations if any of the following conditions apply:
 - (i) The individual property is listed on a single mortgage or deed of trust and sustained the percentage of damage necessary to establish eligibility individually; or
 - (ii) If the damage to multiple properties is so substantial that the aggregate of the total damage would satisfy the percentage requirement for refinancing for all the properties if they were taken as a group, then you should take them as a group. This could make an individual property (on a single mortgage or deed of trust) eligible for refinancing even though the property, standing alone, did not suffer sufficient damage; or
 - (iii) If a single mortgage or deed of trust covers more than one of the properties, you must consider the damaged properties covered by the mortgage or deed of trust as a group, rather than individually. The damage for the group must meet the required percentage; or

- (iv) When the business premise is the home of the sole proprietor, you must aggregate the business and home damage to determine if the required percentage is met.
- (b) Partnerships and Corporations are distinct legal entities. You do not aggregate property owned by either the principals of the entity or any of its affiliates, when determining substantial damage. However, you must aggregate all property(ies) owned by the applicant partnership or corporation (damaged or not) to arrive at the denominator. You include only the uninsured damage to property in the numerator.
- (c) Machinery and Equipment Damage Only. If the uninsured damage is only to M&E, the calculation must include the value of all business R/E owned.
- (3) Effect of Code Requirements on Substantial Damage Calculation.
 - (a) General Rule. If the applicant is repairing the damaged property, you should include the cost of code-required upgrading as part of the damage when you calculate eligibility for refinancing; that is, the numerator of the substantial damage calculation would include the eligible physical loss to the R/E plus the cost to comply with code requirements. This provision applies to all code-required upgrades, regardless of what caused the damage. If the applicant is relocating, you do not include the cost of the code requirements as part of the damage when you calculate refinancing eligibility.
 - (b) Exception to the General Rule. The AAD/LP or higher must approve this exception. Use the higher of the costs (actual loss less insurance plus code-required upgrades vs. replacement cost less insurance) in the numerator of the substantial damage calculation if:
 - (i) The general rule above would result in reduced or no eligibility for refinancing; and
 - (ii) The loan request would be declined for lack of repayment ability; and
 - (iii) The applicant plans to relocate from a SFHA to a non SFHA instead of rebuilding at the damaged site.

- (4) Insurance Recoveries must be deducted in determining uncompensated damage. Therefore you should not offer refinancing until an applicant's insurance recovery is finalized.
- (5) Applicants Request (or Need) for Reduced Physical Loan Amount.
 - (a) If the uncompensated loss meets or exceeds the substantial damage criteria, but the applicant, through other means, completes the repairs for less than that amount, you must use the uncompensated loss as the basis for calculating substantial damage. This includes situations where the applicant does the actual work or acts as the general contractor, etc.
 - (i) If the difference between the verification report and the actual cost is large, or cannot reasonably be explained, you should raise questions about the accuracy of the LV report.
 - (ii) If we determine the verification to be faulty and the refinancing funds are not disbursed, counsel must review the case to see if the mistake can be corrected.
 - (b) When the applicant specifically elects not to repair or replace all the damage:
 - (i) If we know this at the outset (not considering question of collateral), there may be no eligibility for refinancing under the law because the damage to be repaired may be less than substantial. The law requires that the property must be substantially damaged and repaired or replaced.
 - (ii) If we don't know this in advance, the mandatory paragraphs in the LAA requiring the return of refinancing proceeds take effect.
- i. Authorized Refinancing.
 - (1) For home loans, you can authorize refinancing according to appendix 26, paragraph 3.d.

- (2) For business loans, you can authorize refinancing if, based upon a reasonable payment amount which affords the applicant some flexibility and avoids hardship, the amortization of the loan amount would require more than 15 years. You can't authorize refinancing when the amortization of the loan would require 15 years or less.
- j. Partial Refinancing. When circumstances do not permit full refinancing (e.g., lien balance exceeds eligible physical loss), you must consider partial refinancing. If more than one prior lien is eligible, you need to determine the most beneficial way to apply the refinancing eligibility. You should consider the remaining terms, interest rates, installment payment amounts, and any other pertinent factors which will best assist the applicant (see subparagraph 36.m).
- k. Contact with Prior Lienholders. You must request a confidential credit report from each lienholder when considering refinancing.
 - (1) You should first contact the lienholder(s) and attempt to obtain the information over the phone to avoid delays. However, if phone contact is not possible or if the lienholder will not respond to a phone contact, the request must be in writing, using the sample credit inquiry letter format in appendix 9.
 - (2) If the lienholder does not respond to the request for the information, you should ask the applicant to urge them to honor your request. If the lienholder still does not provide the requested information, you must document that result and the efforts made in the LOR. Consult your supervisor before proceeding.
 - (3) If the report indicates a poor payment history before the disaster, you must ascertain the cause(s). If the applicant has routinely had problems in making the payment on the existing lien, you must consider if a decline is appropriate.
- l. Prepayment Penalties. A prior lienholder may have a legal right to enforce a prepayment penalty if we refinance all or any part of the existing lien(s). Whenever the lienholder elects to enforce a prepayment penalty clause:
 - (1) You should seek to have it waived; and
 - (2) If the lienholder agrees to waive it, obtain written confirmation at loan closing.

- m. Reamortization. When the prior liens cannot be fully refinanced and some unpaid balance will remain, you must carefully consider the level of the payments for the disaster loan combined with payments on the remaining unpaid balance. In partial refinance cases, a reamortization of the remaining balance must be negotiated with the prior lienholder(s) as a condition of receiving the partial paydown. The applicant should assume the lead in this discussion.
 - (1) You should enter into this discussion if necessary (with the applicant's consent) because lienholders may not have encountered the unique circumstances associated with a disaster loss.
 - (2) The prior lienholder must provide a commitment for financing the remaining balance. The LAA will include a condition requiring this agreement, if not previously submitted.

- n. Repayment Terms.
 - (1) General Rule.
 - (a) When we fully refinance an existing lien, the SBA payment should be at least equal to the amount of the principal and interest portion of the payment to the existing lienholder.
 - (b) When we partially refinance an existing lien, the total of the applicant's payments to both SBA and to the existing lienholder for the unpaid balance generally should not exceed an amount equal to the principal and interest portion of the predisaster payment to the existing lienholder.
 - (2) Exception to the General Rule.
 - (a) In some cases, it may be appropriate to establish a total payment amount (including the disaster loan and remaining balances of the existing liens) lower than the amount of the payment(s) on the existing debts. Whenever you recommend a lower payment amount you must document the LOR. If the applicant was having difficulty making the payments on the existing debt(s), it is necessary to analyze the causes. If the applicant's debt load was already excessive, you must determine whether an appropriate lower payment after refinancing is possible. If not, a decline may be appropriate.

- (b) An applicant may be able to make total payments (including the disaster loan and the remaining balances of the existing liens) greater than the amount of the payments on the existing debts. For home loans, this is based on the FDM in appendix 26. For business loans you must determine what payment amount the applicant can reasonably make while allowing a margin for contingencies and the normal variations expected during the course of business operations. If that amount is greater than the amount of the payments on the existing liens, it should be the basis for determining appropriate payment amounts to SBA (and for any remaining balance of the existing liens).
- o. Authorization Conditions Applicable to Refinancing.
 - (1) Use of Proceeds (UP). Use of proceeds specifications are in the Catalog of Optional Loan Authorization Text. For home loans, use UP-05 for refinancing of R/E, and UP-06 for refinancing manufactured housing. For business loans, use UP-58 for refinancing of R/E, and UP-59 for refinancing M&E.
 - (2) Reamortization Requirement. When we partially refinance a prior lien, the applicant must provide us with written evidence that either the prior lienholder, or a lender of the applicant's choice, has agreed to amortize the unpaid balance in accordance with the LAA. Use optional condition O/C-05 for this purpose if the existing lienholder is handling the reamortization. Otherwise, use a customized condition.
 - (3) Return of Refinancing Proceeds. When refinancing funds are included in a disaster loan, the LAA will specify that if the borrower fails or refuses to restore the damaged property, SBA will demand return of the proceeds for refinancing.
- p. Authority to Approve Refinancing. Generally, the authority to approve refinancing accompanies the delegated authority to approve a loan. However, if the amount recommended for refinancing exceeds the amount recommended for physical loss, only the AAD/LP or higher can approve the loan. These cases will ordinarily involve additional risk, questions of how the applicant can address the physical loss in excess of the loan funds for that purpose, and the potential for abuse of the refinancing eligibility.

37. RELOCATION

Relocation occurs anytime the victim either elects to or is required to move from the damaged home or business to any other location. Moving next door, across the street, or across the country are all relocations. However, the reason(s) for the move determines the type of relocation, and corresponding limitations and restrictions on eligibility. In states which have walk-away statutes, you must advise the applicant of potential eligibility limits due to the walk-away policy.

- a. General Rule. By statute, we can't provide assistance to any applicant (home or business) who wishes to voluntarily relocate outside the business area where the disaster occurred. However, we may provide assistance if a relocation is other than voluntary. Rebuilding the damaged structure at another location on the same parcel of real estate is not considered a relocation unless the damaged structure was located in an SFHA and is being rebuilt in a non SFHA on the same parcel.
- b. Types of Relocations.
 - (1) Mandatory Relocation. A relocation is mandatory when a victim has R/E damage and:
 - (a) Is unable to repair or rebuild because appropriate governmental authorities will not permit repair or rebuilding. This usually occurs when the victim is denied a building permit, occupancy permit, or other required permission from local, county or State officials; or
 - (b) The damaged site was in an SFHA and sustained substantial damage as defined by the NFIP and the relocation property is not in an SFHA.
 - (2) Involuntary Relocation. A relocation is involuntary when the victim will be permitted to repair or rebuild, but elects to move because of "special or unusual circumstances" or "uncontrollable or compelling reasons" specifically cited in SBA's regulations (see c. and d. below).
 - (3) Voluntary Relocation. A relocation is voluntary when the victim will be permitted to repair or rebuild but instead elects to move. SBA can only fund a voluntary relocation if the applicant moves within the confines of the business area.

- (4) Business Area means the municipality which provides general governmental services to the damaged business or home. If not located within a municipality which provides general governmental services, then business area means the county or equivalent political entity in which the damaged business or home is located. In unusual cases, where the municipality is comprised of more than one county (e.g., New York City), the business area will be the county in which the borrower is located. SBA does not restrict the business area to divisions smaller than a city or town (i.e., school, hospital, other special purpose districts, election wards and precincts, etc.).
- c. Special or Unusual Circumstances. When a homeowner or renter must relocate due to special or unusual circumstances, the relocation is involuntary. These circumstances include, but are not limited to:
- (1) Demonstrable risk that the business area will suffer future disasters;
 - (2) Change in employment status, such as employment transfers, relocation for a new job, lack of adequate job opportunities in the business area, or implementation of retirement plans within 18 months after the occurrence of the disaster;
 - (3) Medical reasons; or
 - (4) Special family considerations which necessitate a move outside of the business area.
- d. Uncontrollable or Compelling Reasons. When a business must relocate due to uncontrollable or compelling reasons, the relocation is involuntary. These reasons include, but are not limited to:
- (1) Elimination or substantial decrease of the market for the business product or service as a consequence of the disaster;
 - (2) Change in the demographics of the business area within 18 months prior to the disaster or as a result of the disaster which makes it uneconomical to continue the business in the business area;
 - (3) Substantial change in business costs as a result of the disaster which makes the continuation of the business in the business area not economically viable;

- (4) Location of the business in a hazardous area such as an SFHA or an earthquake prone area;
- (5) Change in the public infrastructure in the business area within 18 months prior to or as a result of the disaster that would result in substantially increased expenses for the business in the business area;
- (6) Implementation of decisions adopted and partially implemented within 18 months prior to the disaster to move the business out of the business area for good and sufficient business or personal reasons; or
- (7) Other factors which undermine the economic viability of the business area.

e. Eligibility Provisions, Amounts, and Limitations.

- (1) Mandatory Relocation. When a relocation is mandatory, we consider the real property a total loss, regardless of the actual extent of physical damage.

Mandatory relocation provisions do not apply to tenants and renters, except in cases of leasehold or similar improvements.

- (a) The victim may relocate anywhere in the United States (including its territories and possessions and Puerto Rico). No reasons need be cited, however we must have documentation that prohibits repair/replacement at the damaged site.
- (b) The victim may not relocate to an SFHA if the damaged site was in an SFHA and sustained substantial damage as defined by NFIP.
- (c) The amount of eligibility for the damaged real property and improvements is the replacement cost of the damaged property subject to these provisions:
 - (i) The victim may choose to move the damaged structure to the relocation site and repair the structure, provided the loan does not exceed the cost to build a comparable replacement structure at the relocation site;
 - (ii) The victim may choose to purchase a replacement structure, provided that it is equivalent and the loan is not used for upgrading;

- (iii) If the damaged property is a rental or investment property which has an unusually low pre-disaster FMV because of its physical condition (e.g., deferred maintenance), location, or similar market reasons, the cost to replace the structure can't exceed its pre-disaster FMV (see paragraph 22.e.);
 - (iv) Additional costs to meet building codes at the relocation site are eligible;
 - (v) The victim is also eligible for reasonable moving costs. Unless specifically justified in the LOR, the limit for moving expenses for contents of the damaged structure is \$1,500 for home loan borrowers and \$3,000 for business loan borrowers; and
 - (vi) Disaster mitigation assistance is not eligible.
- (2) Involuntary Relocation. When a relocation is involuntary, there is no affect on disaster loan eligibility based upon where the victim elects to relocate. Other limitations apply, as follows.
- (a) The victim may relocate anywhere in the United States, including its territories, possessions, and Puerto Rico. Involuntary relocation provisions also apply to tenants and renters.
 - (b) The amount of loan eligibility is subject to these provisions:
 - (i) The physical loss eligibility for R/E is limited to the cost of repairing the damage to the real property at the disaster site;
 - (ii) The physical loss eligibility for tenants with eligible LHI is limited to the cost of repairing the LHI at the disaster damaged site;
 - (iii) Any code compliance costs which would have been required to repair or rebuild at the damaged property site are not "transportable" to the relocation site;
 - (iv) Any costs of required code compliance at the relocation site may be eligible as an alternate use of proceeds;

- (v) Disaster mitigation assistance is not eligible; and
 - (vi) Moving expenses are not eligible as part of a physical loss loan.
- (3) Voluntary Relocation Within the Business Area. The amount of loan eligibility is subject to the same restrictions as involuntary relocations.
- f. The Relocation Plan. If you recommend approval for relocation, the file and the LOR must state how the applicant plans to replace the damaged property.
 - (1) A relocation plan should address at least the following:
 - (a) A detailed explanation of why the applicant either desires to or must relocate;
 - (b) If the relocation property is known, a copy of the purchase contract, agreement for sale, etc., and a complete legal description;
 - (c) A complete cost breakdown and financing proposal for the property to be purchased, built, or leased;
 - (d) If the relocation property is unknown (not selected), details of the applicant's intentions as to what type of property they will be looking for, and where;
 - (e) What plans, if any, the applicant has for the disaster damaged property;
 - (f) How the applicant will handle any remaining financial obligations on the damaged property; and
 - (g) A flood zone determination on the relocation property.
 - (2) Business relocation plans should also address:
 - (a) If the applicant has adequate funds to sustain the business and its owners until relocation property is selected, built, or leased;
 - (b) If the applicant performed adequate market research on the prospective business to be purchased; and

- (c) If business operations are changing, whether the owner has the necessary managerial ability and industry knowledge.
- (3) If the applicant is uncertain about relocation (other than mandatory situations), you must process the application under the assumption the applicant will repair the damaged property.
- (4) When you discuss relocations, you should strongly urge applicants to make any purchase agreement, contract for sale, or new lease subject to written SBA approval.
- g. Refinancing. Authorized refinancing may be available to victims who relocate.
- h. Collateral Requirements and Disaster Damaged Property. The damaged property from which the victim is relocating may have significant value.
 - (1) Collateral Requirements. Generally, we require both the damaged property and the relocation property as collateral. If the damaged property has outstanding liens, we will permit the lienholder to file a lien in the same amount on the relocation property, provided they release their lien on the damaged property. In these cases we will take a subordinate lien on the relocation property and a first lien on the damaged property. Otherwise, we will take a first lien on the relocation property and a junior lien on the damaged property.
 - (2) Disaster Damaged Property. We have an interest in the damaged property because the property may have value as a source of additional funds for the victim to financially recover from the disaster, and the damaged property may be ineligible for future disaster assistance.
 - (a) If you determine the proceeds from the sale of the damaged property are necessary to reduce the loan amount (for the purpose of lowering the installment payment to a level which the borrower can better afford), sale of the damaged property becomes advisable.
 - (b) Collateral should have "due on sale" clauses. However, when the damaged property is not taken as collateral, the LAA must include the condition requiring that the borrower make their best efforts to sell the damaged property within 2 years from date of note and

submit the net proceeds to SBA (to be applied in inverse order of maturity (IOM) to the outstanding loan balance). This is required unless the borrower demonstrates that doing so would constitute an undue hardship. If not sold within the prescribed 2 year period, the requirement to apply the net proceeds to SBA remains in effect.

- (c) Relocation may make the damaged property ineligible for any future disaster loan assistance. For example, a damaged property located in an SFHA from which the victim relocates is ineligible for future assistance when:
 - (i) The relocation was mandatory; or
 - (ii) The property is located in a Community Under Sanction or in a Nonparticipating Community.
- (d) When we determine property to be ineligible for any future assistance, the LAA must include a condition (OC-04) requiring the borrower to place on the title a notice that the property is ineligible for any future disaster loan assistance for damage caused by any type of disaster.

38. UPGRADING

Physical disaster loans provide funds for the repair or replacement of disaster damage to property. The objective is to restore the property to its pre-disaster condition.

- a. General Rule. Any improvement beyond pre-disaster condition is upgrading, and is not eligible. However, certain exceptions are authorized.
- b. Distinguishing Upgrading from Acceptable Replacement Choices. Similar replacement satisfies the basic objective without raising concerns of upgrading or alternate uses of eligibility. Borrowers can exercise a reasonable degree of discretion in choosing how to replace the damaged or destroyed property. Upgrading usually creates a need for funds in addition to the eligible amount, or involves using excessive amounts to improve one thing by foregoing necessary repairs to another. Trade-offs of size and quality within the approved loan amount are permissible.

- c. Applicant Funded Upgrades. An applicant may make upgrades using his/her own resources or borrowed funds. When an applicant proposes to use other resources, you must ensure that:
 - (1) The applicant has the ability to repay the disaster loan and any other debt; and
 - (2) The SBA's credit position is not jeopardized.
- d. Building Codes. All property repaired or acquired with disaster loan proceeds must meet applicable building codes in effect at the time the necessary permits are obtained. The cost of making improvements to meet code requirements necessary to obtain a permit or other similar approval to make repairs is eligible. Upgrades necessary to meet building codes are not eligible in cases of voluntary or involuntary relocation.
- e. Minimum Residential Standards. All residential property repaired or acquired with disaster loan proceeds must meet minimum (reasonable) standards of decency, safety, and sanitation. Examples of minimal residential standards include interior sanitation (bath and toilet) facilities, heat, safe wiring, and similar concerns normally covered by codes. Normally, this is addressed by local building and occupancy codes and the costs are eligible. However, if not addressed, these judgments and associated costs are made by the Loss Verification Department.
- f. Protective Devices and Mitigation Measures. In some circumstances, additional protective devices and mitigation measures not in place prior to the disaster are eligible improvements (see paragraph 40).

39. ALTERNATE USE OF LOAN ELIGIBILITY

Generally, borrowers must use their disaster loan eligibility to replace the lost property in like kind. However, in some situations, we can allow the applicant to purchase property different from that lost. The determining factor is the reasonableness of each request. For example:

- a. A tenant (renter) who suffered a substantial PP loss is forced to vacate his/her primary residence and is unable to locate comparable rental quarters. We can allow them to use disaster loan eligibility to purchase a primary residence, if:

- (1) The amount of the disaster loan eligibility does not exceed the administrative limit on personal property; and
 - (2) The cost of the residence is no more than its FMV; and,
 - (3) Any cost of the residence that exceeds disaster loan eligibility is available from one or both of the following:
 - (a) Injection of funds that do not have to be repaid; and
 - (b) A loan from another lender.
- b. Owners of destroyed MHs used as their primary residence may be allowed to use their total eligibility to purchase or build a conventional home. Conversely, owners of damaged or destroyed conventional homes used as their primary residence may be allowed to use total eligibility to purchase a MH (not a travel trailer) to be used as a primary residence. However, the cost of the replacement home cannot exceed its appraised value.
- c. Handicapped, disabled, and physically challenged individuals may have special needs which require even more latitude when making alternate use determinations. For example:
- (1) An applicant is confined to a wheelchair which was damaged or destroyed by the disaster in addition to other personal property items. The wheelchair was an older, manually operated model. In lieu of replacing certain other PP items, we could allow the applicant to purchase a motorized wheelchair as a replacement for the manual model.
 - (2) A member of an applicant's household is confined to a wheelchair. No PP damaged was sustained, only R/E damages. In lieu of repairing or replacing some items, we could allow the construction of wheelchair access ramps even if none previously existed.

40. PROTECTIVE DEVICES AND MITIGATION MEASURES

- a. General Rule. Protective devices or mitigation measures in place before the disaster are eligible. If not in place before the disaster, eligibility is based on the need for adding such a device or measure. Examples of these devices or measures include, but are not limited to:

- (1) Retaining walls;
 - (2) Fences;
 - (3) Seawalls or bulkheads;
 - (4) Relocating utilities; and
 - (5) Modifying structures.
- b. Pre-existing Protective Devices or Measures. If the devices or measures existed prior to the disaster, the full cost to repair or restore to pre-disaster condition is eligible, except when the devices or measures were installed outside of a home or other building. In those instances, only the cost of repairing or restoring the device to functional pre-disaster condition is eligible. (The costs of repairing or restoring any cosmetic or nonfunctional embellishments are subject to the landscaping limits.)
- c. Code Requirements for Protective Devices or Mitigation Measures. If the devices or measures did not exist prior to the disaster, the full cost of a device or measure to meet code requirements is eligible.
- d. Necessity of Protective Devices or Mitigation Measures to Make Disaster Repairs. If the devices or measures did not exist prior to the disaster, but are absolutely necessary to repair or restore the property, the full cost is eligible if:
- (1) It is the only feasible or practical method of repairing or restoring disaster damage to land, land improvements, or structures; and
 - (2) It prevents immediate and continuing danger of serious damages to structures (not land and land improvements); and
 - (3) We receive written evidence from a professional third-party (such as an engineer's report) which clearly establishes the necessity for the device or measure (opinions from real estate agents, insurance adjusters and the like should not be considered); and
 - (4) You document the necessity in the LOR.
- e. Post Disaster Mitigation Measures. The statute provides eligibility for the costs of these devices or measures subject to the following:

- (1) Mitigation eligibility depends on there being R/E or LHI damage. If there is only PP damage, there is no mitigation eligibility. Measures designed only to protect PP are not eligible. Eligibility is exclusive to the damaged property and does not transfer if the applicant relocates.
- (2) The maximum eligible cost is 20 percent of the loan amount, calculated before the increase for the cost of the protective device or mitigation measure. For this calculation, the loan amount is the amount loaned for physical damage.
 - (a) This additional mitigation amount up to 20 percent is not subject to the \$200,000 administrative limit for real property damage for home loans. The 20 percent is based on the full amount of the loan for both R/E and PP. Thus, the maximum possible amount of a disaster home loan is \$488,000 (\$200,000 for R/E damage, \$40,000 for PP damage, \$48,000 for mitigation, and \$200,000 for refinancing).
 - (b) For business loans, the 20 percent is subject to the \$1,500,000 legislative limit.
 - (c) For refinancing purposes, you do not include the additional amount in calculating substantial damage or when determining the eligible refinancing amount.
 - (d) You may include code required upgrades which could also qualify as mitigation and which can't be funded due to the administrative limit under mitigation eligibility.
- (3) The proposed device or measure must protect or mitigate against damage from the same type of occurrence as the declared disaster (e.g., protection against future flood damage when the disaster was a flood).
- (4) The applicant must choose the protective device or mitigation measure. You must not recommend any specific mitigation measure or comment on the relative merits of one measure as compared to another. LV must evaluate each request for need or appropriateness before you can take action.

- (5) During loan processing you must:
 - (a) Not include the additional mitigation amount in the credit elsewhere determination (because these costs are voluntary);
 - (b) Address in the LOR how the applicant will fund the difference if the cost of the device or measure exceeds 20 percent of the loan amount; and
 - (c) Include in the LAA a specific use of proceeds condition with a description of the authorized mitigation measure.
- (6) Generally, applicants can request funds for mitigation at any time during the filing period, or if a loan is approved, through the time of full disbursement. After full disbursement, we will accept a request for additional funds for mitigation if we determine that the delay resulted from substantial causes essentially beyond the control of the applicant.
- (7) You must base the 20 percent limitation on the net approval amount for physical damage (amount of the original loan approval, plus increases, less decreases, and exclusive of refinancing) at the time of the approval of an additional amount for mitigation. If the amount of the loan for physical damage is subsequently decreased, we don't decrease eligibility for mitigation funds we have already approved. But if the amount of the loan for physical damage is subsequently increased, mitigation eligibility is increased proportionally.
- (8) Alternate use of loan eligibility is permissible to cover mitigation measures. The 20 percent limit applies only to the amount added to the loan amount for physical damage, and not to the alternate use. As with all requests for alternate uses of eligibility, approval is contingent upon our conclusion that sufficient repairs can be made to make the damaged property reasonably usable and safeguard the Agency's collateral. Generally, we accomplish this by disbursing that part of the proceeds to fund the necessary repairs prior to that part to fund the mitigation measure.
- (9) In cases of a condominium or similar association where the damage is to the real property of individual unit owners and to the common property owned by the association, the individual condominium unit owners may assign their mitigation eligibility to the condominium association.

- (10) Tenants who own leasehold improvements are eligible for mitigation. However, a lease requirement to repair the owner's real property does not convey mitigation eligibility to the tenant.

CHAPTER 5

AMOUNTS, TERMS, AND CONDITIONS OF PHYSICAL DISASTER LOANS41. LIMITS ON LOAN AMOUNTS

There are legislative limits imposed on the disaster loan program (Section 7(c)(6), Small Business Act). These are further restricted administratively in SBA's regulations (13 CFR part 123) and this SOP. The administrative limit applies to the combined total amount of all home loans to any one applicant for any one disaster. Members of a single household (e.g., husband, wife, and dependents) cannot make separate applications for the purpose of exceeding the administrative limit.

a. Administrative Limits on Home Loan Amounts.

- (1) For real estate (R/E) damage, the limit is \$200,000. Real Estate damage includes all physical damage to a primary residence and appurtenant structures, landscaping, land and land improvements, relocation costs, and permissible upgrading.
- (2) For personal property (PP) damage, the limit is \$40,000. Personal Property includes all household contents of the primary residence and eligible vehicles.
- (3) For mitigation measures the limit is 20 percent of the loan amount for physical damage (both R/E and PP damage), up to a maximum of \$48,000.
- (4) For refinancing, the limit is \$200,000.
- (5) The maximum amount of a disaster home loan for a SINGLE disaster is \$488,000.

- b. Legislative Limit on Business Loan Amount. The maximum amount of any business loan (physical and EIDL) is \$1,500,000. This statutory limit applies to the combined total amount of all loans to any one applicant, including its affiliates, for any one disaster and includes the provision for increasing a loan for hazard mitigation measures. The SBA can authorize an exception to this legislative limit if the applicant is a major source of employment (MSE) (see paragraph 42).

c. Disaster Loan Limit for Combined Home and Business Loans. If a business (not an MSE) has eligible losses of \$1,500,000 and its principal owner(s) has home losses, the following limits apply.

- (1) A business organized as a corporation, a subchapter S corporation, a general partnership or a limited partnership, etc., is a separate legal entity and the principal(s) have full home loan eligibility regardless of the amount of the business loan. For example: A corporation has eligible losses of \$1,500,000. The corporation is owned by two individuals, each with a 50 percent interest. Both 50 percent owners are eligible to apply for damages to their respective primary residences up to the maximum administrative home limits.
- (2) A business operated as a sole proprietorship is not a separate legal entity and we must aggregate the losses to the maximum (non MSE) loan limit for a single disaster of \$1,500,000. However, the home loan cannot exceed the administrative limits. For example: A sole proprietorship has eligible losses of \$1,450,000. The primary residence of the sole proprietor is also damaged. Because the two are not separate legal entities, the combined maximum legislative loan limit for one disaster is \$1,500,000. Therefore, the home loan application could not be approved for more than \$50,000.

42. MAJOR SOURCE OF EMPLOYMENT (MSE) WAIVER OF LENDING LIMIT

The Agency may waive the \$1,500,000 legislative limit if a business is a MSE. This is to minimize unemployment of large numbers of people in a disaster-impacted community.

- a. MSE Eligibility. A business applicant qualifies as an MSE if it is a concern which has one or more locations in the disaster area, which locations individually, or in the aggregate:
 - (1) Employed 10 percent or more of the entire work force within the commuting area of a geographically identifiable community, no larger than a county; provided that the commuting area does not extend more than 50 miles from such community; or
 - (2) Employed 5 percent or more of the work force in an industry within the disaster area and, if the concern is a nonmanufacturing concern, employed no less than 50 employees in the disaster area or, if the concern is a manufacturing concern, employed no less than 150 employees in the disaster area; or

- (3) Employed no less than 250 employees within the disaster area.

NOTE: You must aggregate employees of concerns sharing common business premises to determine MSE status for a nonprofit applicant owning the premises.

- b. Discretion to Waive Legislative Loan Limit. The SBA may waive the \$1,500,000 limit if:
 - (1) The damaged location(s) of the MSE are out of business or in imminent danger of going out of business and the waiver is necessary to permit the location(s) to reopen or stay open in order to avoid substantial unemployment in the disaster area; and
 - (2) The applicant has used all funds from its own resources and all available credit elsewhere to alleviate the physical damage and/or economic injury sustained.
- c. Use of Applicant's and/or Owner's Assets and Credit. The SBA will consider a waiver of the legislative limit only to the extent that loan assistance in excess of \$1,500,000 is necessary after the applicant, its affiliates, and its principals use business and personal assets and credit to the greatest extent possible without incurring undue hardship.
- d. Processing Procedure and Approval Authority.
 - (1) Area offices may decline or withdraw applications for more than \$1,500,000 in accordance with normal procedures. The area office may determine that an applicant is not an MSE. (A decline for MSE status is subject to normal reconsideration procedures.)
 - (2) If we can approve an application from a credit perspective and justify an MSE waiver the area office must prepare both recommendations and send the case file to ODA. The AD's recommendations must include the initial recommendation and concurrence by an approving official with delegated authority in accordance with the rule of two.
 - (3) All approval recommendations must contain the following loan conditions:
 - (a) A Net Earnings Clause;
 - (b) An Initial Public Offering (IPO) Clause; and

- (c) A limitation on distributions and compensation.

NOTE: The exclusion of any of these conditions requires justification in the LOR.

- (4) The AA/DA must take final action on the credit and MSE recommendations.

- e. Applicability of Executive Orders. In certain circumstances, Executive Orders concerning floodplain management and wetlands protection may apply (see paragraph 52).

43. VERIFICATION OF DAMAGE

Applications for physical disaster loan assistance require on-site inspections. The only exceptions are Accelerated Processing Declines (APD)s. The Loss Verification Department has specific responsibilities that include, but are not limited to:

- a. Determining estimated cost of repair or replacement of real, personal, and business property;
- b. Providing information gathered during the on-site inspection to guide you in establishing eligibility within program guidelines;
- c. Estimating replacement and pre-disaster FMV of property;
- d. Determining if property is located in SFHAs as defined by the NFIP;
- e. Determining if property is located within the CBRS;
- f. Evaluating the appropriateness of disaster mitigation requests; and
- g. Providing estimated values of undamaged real property offered or required as collateral, as requested.

44. DETERMINATION OF AMOUNT OF PHYSICAL LOAN ELIGIBILITY

Loan officers are responsible for making all eligibility determinations, including ineligible property, and applying program limitations to eligible property.

a. Definitions.

- (1) The SBA verified total loss is the amount reported by the verifier without regard to program limits.
- (2) Uncompensated physical loss is the difference between the SBA verified total loss and any deductions (insurance or other recoveries) for duplication of benefits (DOB).
- (3) Eligible physical loss is the difference between the uncompensated physical loss and any amounts in excess of landscaping limits or other program lending limits.

b. Loan Officer Adjustments to the SBA Verified Total Loss. Because the LV may not identify all ineligible property, the verified total loss may need further adjustment. After you analyze the verified losses, determine eligibility of all damaged property, apply all restrictions and limitations and add any associated indirect expenses, the result is the adjusted verified total loss.

- (1) For personal property (home loans), the LV report provides an amount of eligibility for each item and explains any differences between the verified amount and the eligible amount. This difference is the ineligible amount. (For example, a fur coat with a verified loss amount of \$2,000, but an eligible loss of only \$300 due to functional value, results in an ineligible amount of \$1,700.)
- (2) For business contents, particularly inventory, your financial analysis may lead to questions on the LV report. You must consult with LV if discrepancies exist.
- (3) For real property (all loans), the LV report provides an estimate of the cost to repair/replace all disaster damage by category. You must not vary from the report without first consulting with the Loss Verification Department. You must document any adjustment in the LOR.
- (4) You are responsible for applying all other restrictions and limitations in determining the amount of physical loss to eligible property.
- (5) You may increase the SBA verified total loss to account for any associated indirect expenses in accordance with the provisions of subparagraph 22.b.(2).

c. Deductions from the SBA Verified Total Loss.

By statute, eligibility for SBA disaster loans is limited to underinsured or uncompensated losses. You must deduct insurance or any other compensation received or anticipated (from any source) for damage to eligible property to determine the amount of uncompensated physical loss. You do not deduct any insurance or other compensation received for purposes other than loss or damage to eligible property. (This unduplicated compensation is available to the applicant to apply toward repair of ineligible property or other purposes.) Deductions from the SBA verified total loss can originate from:

(1) Other Disaster Relief Organizations.

- (a) American Red Cross (ARC) Grants. ARC disaster emergency assistance is usually in the form of vouchers for food, shelter, clothing, clean-up kits, etc. We don't consider this type of assistance a duplication of benefits (DOB) and you do not deduct it from the verified losses. However, if the ARC provides assistance for permanent repairs, you must deduct this assistance rather than require repayment to ARC.
- (b) FEMA Assistance. Most forms of FEMA emergency assistance do not duplicate SBA disaster loan assistance. FEMA temporary housing assistance includes:
 - (i) Rental assistance and emergency living expenses (ELE) provided to displaced disaster victims. You do not deduct FEMA funds allocated for these purposes from SBA's verified total loss.
 - (ii) MRP funds provided for minimal repairs to make a residence habitable. You must deduct total MRP amounts if it exceeds \$100.
 - (iii) Trailers or MHs provided to displaced disaster victims, which is not deducted.
- (c) Individual and Family Grant Program (IFGP) Grants. IFGP assistance may not duplicate SBA disaster loan assistance.

- (i) We do not deduct IFGP assistance from the SBA verified losses during processing. If you recommend approval (including limited approval) you eliminate the duplicated benefit by using loan proceeds to repay the grant program in the amount of the duplicated assistance. The LAA must include a use of proceeds requiring reimbursement to IFGP in the form of a co-payable check.
 - (ii) In some instances, IFGP assistance will include grants for medical, dental, funeral expenses, etc. These are not DOBs and you do not deduct or repay this assistance.
 - (2) Net insurance proceeds are funds available to the applicant for repair/replacement of disaster damaged property and must be deducted from the SBA verified total loss.
 - (a) Exclusions from Net Insurance.
 - (i) Insurance may be for damage to both eligible and ineligible property, without specific policy provisions. If breakdowns aren't provided, you must apply the insurance recovery first to ineligible property and then to eligible property.
 - (ii) If the holder of a lien on real property and/or business M&E has legal control of the insurance proceeds and requires that the proceeds be applied to reduce the lien balance, you don't deduct that amount. The reason the lender required the funds doesn't matter, only that they had the legal right to do so and did. You must obtain substantiating evidence either in writing from the lienholder or from a documented telephone conversation.
- NOTE: You must deduct the insurance if an applicant elects to apply insurance proceeds for the reduction of an existing lien, or if the applicant requested the lender to demand payment.
- (b) Personally Owned Vehicles. You must deduct from the verified loss to a personally owned vehicle the insurance proceeds voluntarily or involuntarily used to reduce or pay off a lien on the vehicle.

- (3) Other Recoveries and Deductions. You must also deduct any other recoveries or compensation which would duplicate an SBA loan for physical repairs.
 - (a) Free Labor and Materials. You must deduct the dollar equivalent of free labor provided by the applicant, relatives, friends or third-parties to restore disaster damage, and the cost of any materials donated to the applicant for use in the restoration.
 - (b) Overhead and Profit. You must deduct the amount of overhead and profit included in the LV's estimate if the applicant business or an affiliated business is used to repair disaster damage. (The LAA contains a standard paragraph which prohibits borrowers from paying overhead or profit for repairs performed by, or for materials acquired from, a business in which the borrower owns a 50 percent or greater interest.)
 - (c) You must deduct third party payments/adjudicated settlements when liability is acknowledged by another or legal proceedings determine compensation has been made or accepted.
 - (d) Miscellaneous Recoveries. You must deduct grants or gifts, typically from State or local governments and volunteer agencies, including ARC, Salvation Army, Catholic Charities, Mennonite Relief Fund, and similar organizations.
 - (e) Government Sponsored Buyouts. You must deduct the purchase price if FEMA or any other agency buys the damaged property. You do not deduct moving expenses associated with the purchase.

d. Assignments of Pending or Future Insurance Recoveries.

- (1) If you know the amount of an insurance settlement at the time of loan processing, you deduct it from the SBA verified total loss.
- (2) If you don't know the full amount of an insurance settlement at the time of processing, you only deduct the known amount. This arises when an insurance claim for disaster damage:
 - (a) Has not yet been processed or settled;
 - (b) Has been only partially processed or settled; or

- (c) Is in dispute, or when an applicant claims that additional insurance coverage may be due.
- (3) You must include an appropriate condition in the LAA providing for an assignment of any pending insurance settlement as follows.
 - (a) If additional amounts are expected, use the appropriate LAA condition to take an assignment of any insurance proceeds in excess of the amount deducted.
 - (b) If no insurance is deducted but some is expected, use the appropriate LAA condition to take an assignment of any insurance proceeds.
- e. Determining the Final Eligible Loan Amount. After you make all required deductions from the SBA verified total loss in accordance with subparagraphs c. and d. above, you have determined the uncompensated physical loss. You must now make the following adjustments to determine the eligible physical loss:
 - (1) Apply the landscaping limits;
 - (2) Apply the legislative or administrative limits;
 - (3) Add any eligible amount for necessary and appropriate additional protective devices or mitigation measures within the legislative limit; and
 - (4) Add any amount of authorized refinancing.
- f. Lending for the Insurance Deductible Only. The provisions of this paragraph apply to any disaster whenever the applicant seeks a loan solely for the insurance deductible. Lending for the deductible avoids many time consuming tasks without significantly increasing the risk of DOB.
 - (1) When the estimate of damage from the insurance company is unknown, we will lend the lesser of the insurance deductible or the eligible physical loss based on SBA's loss verification.
 - (2) When the estimate of damage from the insurance company is known and exceeds SBA's damage verification, we will accept the insurance company's estimate of damage in lieu of performing a reverification, and increase the eligible loan amount as appropriate, up to the amount of the deductible.

(3) Processing Procedure.

- (a) You must verify the amount of the deductible, either by phone with the insurance company or agent, or by requesting a faxed copy of the declarations page of the policy from the applicant. If all attempts fail, you may accept the applicant's statement as to the amount of the deductible and process the loan accordingly. In these cases, you must include the following requirement in the conditional commitment letter (CCL): " A copy of the declarations page of the insurance policy or other evidence, satisfactory to SBA, of the amount of the insurance deductible."
- (b) You do not take assignments of insurance when the loan is for the deductible only.

NOTE: If the applicant desires to borrow more than the deductible, the above procedures do not apply and you must perform the standard eligibility calculations.

45. ROUNDING OF DOLLAR AMOUNTS

For administrative convenience, you must round dollar amounts when determining the actual loan amount. Because the Agency's loan accounting system accommodates loan amounts in even hundreds, you must round the actual dollar amounts of all disaster loans to the next higher whole hundred. You round the final loan amount only once, after you determine the individual category amounts (R/E, PP, M&E, inventory, etc.).

46. INTEREST RATES

Each disaster declaration specifies the interest rates applicable to the categories for all loans processed under that disaster declaration, except as provided for in c. below.

- a. Home Loans. The Small Business Act contains a formula for setting two interest rates for home loans, based on the availability of credit elsewhere. The lower rate applies to homeowners without credit available elsewhere (NCE rate), and the higher rate applies to homeowners with credit available elsewhere (CE rate). The method for determining home loan credit elsewhere is in appendix 24.

- b. Business Loans. Similarly, the statute contains another formula for setting two interest rates for business loans, based on the availability of credit elsewhere. The lower rate applies to businesses without credit available elsewhere, (NCE) and the higher rate applies to businesses with credit available elsewhere (CE). The method of determining business loan credit elsewhere is in appendix 25.
- c. Nonprofit Organization Loans. The statute contains another formula for setting two interest rates for nonprofit, eleemosynary, cooperative, religious, and similar organizations and institutions, depending upon the availability of credit elsewhere. In these cases, use the business credit elsewhere test (CET) (see appendix 25). For nonprofit and other organizations without credit available elsewhere, the interest rate is the same as for businesses without credit available elsewhere. For nonprofit and other organizations with credit available elsewhere, we base the interest rate on a different statutory formula. The Office of Disaster Assistance provides this rate at the beginning of each fiscal year. This rate applies to all credit elsewhere nonprofit loans at the time of approval if it is lower than the credit elsewhere rate stated in the declaration or designation. Otherwise, the credit elsewhere rate announced in the declaration or designation applies.

47. LOAN TERMS AND INSTALLMENT PAYMENT AMOUNTS

- a. General Principle. You determine the installment payment amount based upon the applicant's ability to repay. First you establish the installment payment amount and then you set the term in accordance with that amount.
- b. Maximum Term.
 - (1) The maximum term of disaster loans is 30 years.
 - (2) For businesses able to obtain credit elsewhere the maximum term is 3 years.
 - (3) For nonprofit, eleemosynary, religious, cooperative, and similar institutions able to obtain credit elsewhere, the maximum term is 30 years.
- c. Establishing the Term.
 - (1) You are responsible for an independent evaluation of the applicant's ability to repay. You should not base payment amounts and terms solely on an applicant's request.

- (2) For home loans, the Fixed Debt Method (FDM) described in appendix 26 provides the method for analyzing and justifying payment amounts and terms.
 - (3) For business loans, you must justify the payment amount and the resulting loan term in the LOR.
- d. Equal Installment Payments. Normally, disaster loans are repaid in equal monthly installment payments of principal and interest which fully amortize the loan amount and the interest accrued during the initial deferment period within the loan term (see g. below).
- e. Exceptions to Equal Installment Payments.
- (1) Occasionally, it may be appropriate to approve a loan with reduced initial installment payments and larger installment payments thereafter.
 - (a) This usually occurs when an applicant will pay off a significant fixed debt within the first 2 years of the loan, and that debt is unlikely to recur, such as a mortgage or a one time loan.
 - (b) You must justify recommendations for reduced initial payments in the LOR, subject to the following:
 - (i) You must restrict the initial installment payment amount to not more than 2 years, after which the full (permanent) installment payment amount is required;
 - (ii) We can permit only two payment amounts (initial and permanent). This restriction does not govern changes which may become necessary during the closing, disbursing, and servicing processes; and
 - (iii) Generally, the initial payment amount should at least cover accruing interest. This avoids an accrual of deferred interest requiring an unreasonably large permanent payment amount to amortize within the term.
 - (2) Balloon payments are prohibited.

- f. Frequency of Installment Payments. You must justify any exception to monthly payments in the LOR. However, when an applicant receives income on a seasonal or annual basis, you may arrange the repayment schedule to provide for quarterly, semi-annual, or annual payments.
- g. First Payment Due Date.
 - (1) The first payment due date is 5 months from the date of the Note. This reflects a standard deferment of 4 months. It recognizes that disbursements are seldom completed on the Note date, and that disaster recovery is seldom accomplished immediately upon funding.
 - (2) In some instances you may need to defer the first payment due date longer than 5 months from the date of the Note. For example, when the construction/major repair will take a protracted period, the borrower may be unable to make full payments until the project is substantially completed. In these cases, you may set the first payment due date more than 5 months from the date of the Note if you justify the need in the LOR. Use this provision with caution and only to address clear needs. You should be aware that the interest accrual during these deferment periods can be significant, and may result in substantially higher installment payments to amortize the loan within the term. Approval authority for these deferments is limited as follows:
 - (a) First payments due up to and including 1 year from the date of the Note require SLO approval;
 - (b) First payments due more than 1 year and up to and including 18 months from the date of the Note require AAD/LP approval; and
 - (c) First payments due more than 18 months and up to and including 2 years from the date of the Note require an AD's recommendation. Only the AA/DA may approve these requests. This restriction is not intended to govern unforeseeable situations where the initial disbursement is delayed beyond 18 months. It does govern situations where there has been at least one disbursement.
- h. Payments are Fixed Amounts in Whole Dollars.
 - (1) You must express all installment payments as a fixed number of dollars, rather than "principal and interest" or "interest only" or other descriptions.

- (2) You must round all installment payments up to the next whole dollar to accommodate automated collection facilities.
- i. Terms in Whole Months or Years. You must write initial loan terms in whole months or years. You round up to the next month or year as follows:
- (1) Write loan terms of less than 1 year, in whole months (e.g., 9 months);
 - (2) Write loan terms of less than 3 years in years and whole months (e.g., 2 years 7 months);
 - (3) Write loan terms of 3 years or more in whole years; and
 - (4) If you modify a loan, the resulting term will not usually be a whole year. In these cases, you write the modified term for the next higher whole month, even if the loan term is 3 years or longer.
- j. Calculating Payment Amounts and Loan Maturities.
- (1) Accrued Interest. You must account for the interest accrued during the initial deferment period when you set the loan term. Every loan has at least a 4 month deferment. However, most loan amortization computer programs and electronic calculators assume that the first payment is due at the end of the first month. Remember to adjust for the deferment period.
 - (2) Home Loans and 1-4 Rentals. To ensure consistency and simplicity, you must calculate the installment payment amounts and loan terms as follows (for business loans, see (3) below).
 - (a) You calculate the interest accrued in the deferment period as if the loan were fully disbursed at the signing of the Note. Multiply the loan approval amount by the interest rate, divide by 12 (to obtain the monthly interest accrual), multiply by the number of months for which interest has been deferred in excess of 1 month (4 months if the standard deferment setting the first payment 5 months from the date of the Note is used), and add the result to the loan approval amount. This sum is the dollar amount used to calculate the loan term.
 - (b) Calculate the number of months it would take to pay off the dollar amount resulting from the calculations in (a) above by amortizing this amount using the target payment (1/3 CA).

- (c) Add the number of months, in excess of 1, during which interest will accrue before the first payment due date (4 months if the standard deferment setting the first payment 5 months from the date of the Note is used) to the number of months resulting from the calculation in (b) above.
- (i) If the result is less than 36 months, round to the next higher whole month. This is the final loan term. It will be expressed in years and months (e.g., 27 months is 2 years and 3 months).
 - (ii) If the result is 36 or more months, convert the term to years by dividing the total number of months by 12, and round up to the next higher whole year. If this result is 30 years or less, this is the final loan term.
 - (iii) In (i) or (ii) above, when the term is rounded up to the next higher whole month or year, the installment payment amount will not exactly correspond to the final loan term. Recalculate the exact payment amount required for the final loan term and round the payment up to the next higher whole dollar amount.

NOTE: This amount should not be larger than the payment used for the calculations before rounding up the term.

- (iv) If the result of your calculation in subparagraph (c) is more than 360 months (30 years), recalculate the amortization with the loan approval amount from (a) above and use 356 months (the maximum number of monthly payments on a 30-year loan with the standard deferment) to determine the necessary monthly payment. If this payment amount is within the range from 1/3 to 100 percent of cash available (CA), generally you write the loan with the maximum 30-year term and this payment amount (see appendix 26, paragraph h.2., for exceptions to this general rule). If the payment exceeds 100 percent of CA, consider the options set forth in appendix 26. The payment amount must never exceed CA. Round the payment up to the next higher whole dollar amount.

- (d) You must enter the term resulting from (c) above, the frequency of payment, and the installment payment amount in Section E of the Home LOR.
- (3) Business Loans. For business loans, determine a reasonable amount for the borrower to pay for each monthly (or other) installment in place of the target payment used for home loans. You must justify the recommended payment for a business loan in the LOR.
- (4) The above calculations are made only for administrative convenience to determine the payment amount. If a borrower questions the methodology, you should emphasize that the promissory Note specifies that payments will first be applied to the interest accrued before any portion of payments will be applied to principal. The loan is a simple interest loan, and the SBA loan accounting system does not charge interest on interest.
- k. Special Provisions Applicable to Private Colleges and Universities. The Small Business Act provides authority to waive interest for the first 3 years and to defer principal payments for the first 3 years of the term of a disaster loan to a private college or university in Presidential declarations. Only the AA/DA can approve these deferments.

48. COLLATERAL REQUIREMENTS

- a. General Policy. The law does not require collateral on disaster loans. However, SBA policy establishes collateral requirements based on a balance between protection of the Agency's interest as a creditor and as a provider of disaster assistance.
- b. Unsecured Loan Limit.
 - (1) The Limit for Unsecured Physical Disaster Loans (Home and Business) is \$10,000. The law (Section 7(c)(6), Small Business Act) prohibits requiring collateral on physical disaster loans of \$10,000 or less at the time of approval. However, we can accept security when the applicant voluntarily offers collateral on physical disaster loans of \$10,000 or less. For example, an applicant may wish to take advantage of the mortgage interest deduction for tax purposes, and may freely offer the property as security. In these cases we would accept security for the loan which would otherwise be unsecured. Never suggest collateralizing an otherwise unsecured loan with an applicant. You must always document the applicant's unsolicited offer.

(2) When making multiple disaster loans to the same borrower (or affiliated group), apply the following guidelines.

- (a) You must aggregate the amount of all physical and economic injury disaster loans to the same borrower (and its affiliates) from the same disaster declaration (e.g., home loan and business loan, or two loans to two affiliated businesses). If the aggregate amount is more than \$10,000, each of the loans must be secured. If the aggregate amount is \$10,000 or less, you can't require collateral.
- (b) You must aggregate disaster loans from the same disaster event in multiple jurisdictions (e.g., states) even if we issue a separate disaster declaration in each jurisdiction.
- (c) Do not aggregate disaster loans with outstanding loans to the same borrower (and affiliates) from prior disasters.
- (d) The rule about not combining borrowers in subparagraph 41.c. for purposes of applying loan eligibility limits does not apply to collateral considerations, which are a credit matter.

c. Secured Loan Limit. All loans exceeding the unsecured loan limit require collateral. Real estate is the preferred form of collateral.

- (1) Determine what collateral is available, and take that collateral which will best secure each loan. When an applicant offers certain collateral, try to honor the applicant's preferences, but only to the extent that doing so will secure the loan at least as well as taking other available collateral not offered. Where a conflict exists between the collateral available and offered, our determination is final.
- (2) We will not decline an application if the available collateral does not adequately secure the full loan amount. However, an applicant's refusal to pledge available collateral is grounds for declining a loan application or canceling an approved loan.
- (3) Generally, collateral is adequate if the equity is at least 100 percent of the loan amount. Equity is determined as follows.

- (a) The Loss Verification Department assigns a predisaster FMV to the collateral. If appropriate, the collateral may be appraised at "liquidating" or "distress sale" value.
 - (b) From this value, you deduct the current balance owing on all liens associated with the collateral property from that value.
 - (c) Then compare the equity (difference) to the loan amount for coverage purposes.
 - (d) If the applicant disagrees with our collateral property estimate and equity determination, they may submit written independent evidence for re-evaluation.
- (4) You must take additional collateral if:
- (a) The proposed collateral does not provide 100 percent coverage; and
 - (b) The applicant's credit (repayment and/or credit history) is marginal.
- (5) Generally, we will not require an applicant to pledge more collateral than is necessary to adequately secure the loan.
- (6) Consistent with the above criteria, we would take the damaged or replacement property for collateral. However, to avoid unnecessary paperwork or excessive collateral, it may be appropriate to do otherwise. For example, if an applicant owns two real estate parcels, one damaged and one not damaged, where the equity in the damaged property is insufficient to secure the loan but the equity in the other (undamaged) property is sufficient, we prefer to fully secure the loan with a lien on the undamaged property and avoid taking another lien on the damaged property. Otherwise, the usual practice is to require a lien on the damaged property, and because that is insufficient to secure the loan, to require another lien on the undamaged property. For insurance requirements, see paragraph 50.

d. Special Provisions for Secured Home Loans.

Real estate [including manufactured housing (MH)] will always be the preferred form of collateral to secure a home loan, even if the equity in the R/E or MH is insufficient to secure the full loan amount. Take personal property as collateral only if the applicant owns no real property and if the PP is valuable or unique, such as boats, RVs, etc. When we do secure a home loan with PP, we will not require a specific lien position, but will accept the best valid lien position available.

If the applicant is self-employed, you must also take tangible business assets to the degree necessary to make up the lack of equity in the real estate.

(***)

e. Special Provisions for Secured Business and EIDL Loans.

- (1) The restriction against taking PP as collateral does not apply to rental properties which are processed in a manner similar to home loans.
- (2) If R/E is unavailable or inadequate, other fixed assets, such as M&E, are usually preferred to inventory or accounts receivable as collateral. If there isn't any R/E damage but real property is available as collateral, we will require a lien on that property. An applicant's refusal to pledge available preferred collateral (e.g., R/E) is a basis for declining an application or canceling a loan even if other nonpreferred collateral property may be sufficient to secure the loan.

f. Special Provision for Collateral from Business Tenants.

If the existing lease (including renewal options) is shorter than the recommended loan term, the existing lease should be extended to "cover" the loan term, and assigned to SBA with right of reassignment. If the applicant prefers, other collateral acceptable to SBA may be substituted and we can waive extension and assignment of the lease. If it is not possible or desirable to modify the term of the lease, document the likelihood of the business continuing at the same or different location, and how this affects repayment ability.

g. Special Provisions for Secured Loans to Associations. Certain special collateral requirements apply to associations. Generally our basic approach is the following.

- (1) Require a special assessment, approved by the general membership, with a binding assignment thereof. (The association's general membership shall pass a special assessment according to its governing documents.) The legal department will prepare the assessment as follows.
 - (a) It will be in an amount sufficient to fully amortize this loan in accordance with the payment terms as stated in the LAA.
 - (b) It will refer to and adopt all of the terms and conditions of the LAA, and provide that the proceeds of the special assessment will be used solely to amortize the loan.
 - (c) It will be irrevocable until the SBA loan is paid in full.
 - (d) It will require the association to assign the proceeds of the assessment to SBA as collateral for the loan.
 - (2) Require a mortgage or deed of trust on the common areas owned by the association, where permitted by law.
- h. Prior Liens and Other Creditors. Applicants often have prior liens on the collateral property. We should make the most favorable arrangement possible with other creditors and prior lienholders. Banks and other creditors are frequently unwilling or legally prohibited from subordinating their liens to a disaster loan. With respect to prior lienholders you should consider the following.
- (1) All LAAs for secured loans include a standard condition by which borrowers agree to neither seek nor accept future advances under any superior lien on the collateral without the prior written permission of SBA. Sometimes, stronger requirements may be appropriate, such as obtaining, prior to disbursement in excess of the secured threshold, the prior lienholder's agreement to close the open-end advance clause or agreement not to advance any additional funds under a superior lien. This is especially important when the collateral secures an open line of credit. You should use LAA condition RC-01 in these cases. You must justify any unusual needs in the LOR, and incorporate the appropriate custom condition in the LAA.

- (2) If the collateral is located in a "nonnotice" state (consult with counsel), we will send a letter to the senior lienholder(s) requesting advance notice of any foreclosure actions against the borrower. Prior to disbursement in excess of the secured threshold, it may be appropriate to obtain a specific agreement by the prior lienholder to provide this notice in advance of foreclosure. You must justify unusual need in the LOR, and incorporate the appropriate condition in the LAA after consulting with counsel.
- i. Comparative Value of Liens. If the applicant elects not to directly repair or replace the disaster damaged property, you must consider the comparative value of liens. As a general rule, if we accommodate the applicant (such as involuntary or voluntary relocation, applicant-funded improvements, alternate use of eligibility, etc.) our lien position must be at least as good as it would have been had only the damaged or destroyed property been repaired or replaced and a lien placed on it.
 - (1) Collateral value is not merely a matter of the priority of liens, but can also be a function of the value of the lien for each alternative.
 - (2) We will consider our collateral position to be as good in any case where the loan is sufficiently collateralized by the lien after accommodating the borrower, regardless of the priority of the lien position. You must justify any exception in the LOR.
- j. Collateral Appraisals. Formal appraisals, although rare, may occasionally be appropriate. This might arise in very large loans, especially MSE loans. Formal appraisals are performed by professional, licensed public appraisers. The AAD/LP or higher must approve requests for formal appraisals
- k. Relocation of Disaster Victims. Refer to subparagraph 37.h.(1) for guidance on treatment of prior liens on properties involved with relocation.
- l. Widely Scattered Collateral. When the damage is to property which is dispersed across a wide geographic area (e.g., billboards and vending machines), or when an applicant offers this type of property as collateral, the cost of obtaining hazard insurance coverage may be prohibitive. In these cases you should consider alternative collateral on which appropriate insurance can be obtained at reasonable cost.
- m. Release/Retention of Collateral. When we reduce a loan to an amount below the secured threshold, we aren't compelled to release the collateral. Whether or not to release the collateral upon request must be based upon prudent credit judgement. You must address the reasons in the loan modification.

49. GUARANTEE REQUIREMENTSa. Definitions.

- (1) To guarantee is to assume responsibility for payment of a debt if the person(s) or entity primarily liable fails to perform.
- (2) A guarantee is the actual written agreement by which one assumes responsibility for ensuring payment of the debt or obligation of another.
- (3) A guarantor is the one who makes or gives the guaranty.
- (4) A principal, for purposes of this paragraph, means:
 - (a) For sole proprietorships, the proprietor;
 - (b) For General Partnerships, all general partners;
 - (c) For Limited Partnerships, all general partners and any limited partner who owns 20 percent or more of the partnership; and
 - (d) For corporations, any individual or legal entity who owns 20 percent or more of the voting stock.

NOTE: Only individuals and legal entities with 20 percent or more ownership are considered principals for guarantee purposes.

- (e) You determine the composition of the controlling group on a case by case basis. Some individuals who do not meet the definition of a principal may be in the controlling group, and the guarantee requirement applies. For example, this may occur in a family owned business, where several members of the same family each own less than 20 percent of a business, but together form a controlling group (see 13 CFR 121.103(a)).

- b. Business Loans. Generally, we require all the principals to provide a blanket guarantee of the loan (except in cases of sole proprietorships). Depending on the adequacy of the collateral owned by the business, guarantees can be secured or unsecured. The guarantees of the principals are not a substitute for business collateral. They are a safeguard to protect our position. Refusal of a principal to provide a guarantee is a basis for declining an application or canceling a loan.

- (1) Unsecured Guarantees. If the business can adequately secure the loan with real estate, the guarantees of the principals should generally be unsecured.
 - (2) Secured Guarantees. If the business does not have adequate equity in the real estate, the guarantees of the principals should generally be secured (even if the business has M&E, etc., which was also taken). You should require all principals to be secured guarantors even if any one of them could adequately secure the loan.
 - (3) On rare occasions, a limited guarantee may be appropriate.
- c. Home Loans. Guarantees are not ordinarily necessary for home loans. However, sometimes all owners are not applicants. This usually arises among family members due to inheritance provisions, life estates, or estranged spouses, etc. In these cases we generally require the nonapplicant owner to execute our mortgage/deed of trust. In some states, this procedure is not legally sufficient to perfect our lien. Therefore, a guarantee, secured by and limited to their interest in the collateral property, may be appropriate.

50. HAZARD INSURANCE REQUIREMENTS

- a. General Requirements. We require hazard insurance on all secured loans to protect all insurable collateral. When collateral property other than the damaged property is pledged, hazard insurance is required on both the damaged property and the collateral substituted to secure the loan.
- b. Inventory Insurance Requirement. Even if inventory is not taken as collateral, we must require business borrowers to insure all inventory if it represents an important source of income generation.
- c. Type of Insurance Coverage Required. Generally, required hazard insurance includes fire, lightning, and extended coverage. Hazard insurance must include coverage for the peril that caused the damage and the peril for which the disaster was declared, when it is required by the mortgage lenders in the disaster area. To make this determination the AD, or designee, must check the requirements of the three largest mortgage lenders in the disaster area immediately after each disaster is declared.

- d. Amount and Terms of Coverage Required. Generally, borrowers must furnish hazard insurance equal to at least 80 percent of the insurable value of the property to be insured. Insurance required on collateral must name SBA's servicing office as mortgagee or loss payee.
- e. Evidence of Coverage Required. Borrowers must provide proof of required insurance coverage prior to disbursement of loan funds in excess of the unsecured threshold. The legal department must review deductibles to ensure they are satisfactory and may refuse to accept policies with excessive deductible amounts.
- f. Loan Conditions. Borrowers must maintain the stipulated coverage throughout the entire term of the loan. Most insurance on commercial property is written with a coinsurance clause providing that the insurer will not pay the entire amount of the loss, even within the stated policy limit, if at the time of the loss the amount of insurance in force is less than a stated percentage insured. Because most insurance claims are for partial losses, we should stress the need to maintain the amount of insurance coverage required by the coinsurance clause.

51. FLOOD INSURANCE REQUIREMENTS

- a. Definitions (for this paragraph).
 - (1) Act. The Flood Disaster Protection Act of 1973, as amended.
 - (2) FIA. The Federal Insurance Administration, a part of the Federal Emergency Management Agency.
 - (3) NFIP. The National Flood Insurance Program, authorized by the Act and administered by FIA. The NFIP includes an insurance program for indemnification against flood property damage, and conditions for community participation which are intended to minimize future flood losses.
 - (4) SFHA. An officially designated and defined Special Flood Hazard Area. These areas are designated on flood hazard boundary maps. The SFHAs normally mean the A zones which indicate the area in the 100-year floodplain. Other designations of special flood hazard areas, such as E (erosion), M (mud-flow), or V (velocity) are included as SFHAs.

- (5) Construction. Defined by the regulations based on the Act to include the "acquisition, construction, reconstruction, repair, or improvement of any building or mobile home on a foundation, and any machinery, equipment, inventory, fixtures, or furnishings, contained or to be contained therein."
- (6) Flood Hazard Boundary Map. A map published by FIA indicating the boundaries of SFHAs.
- (7) Flood Hazard Boundary Map Effective Date. The date a flood hazard boundary map became effective.
- (8) Participating Community. A community which is participating in the NFIP by adhering to FIA/FEMA flood mitigation standards.
- (9) Nonparticipating Community. A community which is not participating in the NFIP and in which NFIP flood insurance coverage is not available. A nonparticipating community may be under sanction (see definition below), which has important consequences.
- (10) Community Under Sanction. A community the FIA has acted to sanction for failure to meet the requirements of NFIP and in which NFIP flood insurance is not available. This includes communities which are nonparticipating after 1 year has elapsed since the flood hazard boundary map effective date (since SFHAs were formally identified within the community), or a community which has withdrawn from or failed to adopt or adhere to NFIP requirements.
- (11) Insurable Property. Property which can be insured under a standard NFIP flood insurance policy.
- (12) Uninsurable Property. Property which cannot be covered under a standard NFIP flood insurance policy (e.g., unimproved land, gas and liquid storage tanks, wharves, piers, bulkheads, growing crops, shrubbery, land, livestock, roads, motor vehicles, and certain contents of basements). Whether property is insurable is unrelated to eligibility. Some uninsurable property (e.g., crops and livestock and property in the Coastal Barrier Resources System) is not eligible, while other uninsurable property (e.g., some motor vehicles and some contents of basements) is eligible.

- b. Determination of Location in an SFHA. We are required to make a good faith determination whether a property is located within an SFHA. The determination is made by the LV on FEMA Form 81-93 and is a permanent part of the verification report in the case file. Letters from real estate or insurance agents or other parties are not acceptable substitutes for our determination based on the maps.
- c. Contested Location in a SFHA. The SBA must inform an applicant/borrower, in writing, that, if it disagrees with our determination, it may submit evidence directly to FEMA (include the appropriate office address) that the property is safe from the base flood. If FEMA provides a letter stating that the property is not in an SFHA, we may remove the flood insurance condition.
- d. Flood Zone Determination on Relocation Property.
 - (1) When relocation property is known, we base the SFHA determination on the relocation site. If not known, we base it on the damaged property location.
 - (2) When the relocation site is temporary, such as during reconstruction of the permanent site, we must determine whether any loan proceeds will be used toward property stored or used in that location, or whether any of our collateral property will be at that location. If either situation exists, we must make a determination for both the temporary site and the damaged site.
 - (3) If we learn at any time while in possession of a borrower's case file that the borrower has moved, we must make a new determination.
- e. Property Partially Located in an SFHA.

When only a portion of a property is in an SFHA, we consider the property to be located within the SFHA and subject to the flood insurance requirement. An exception to this rule occurs when the entire portion of the property located within the SFHA is uninsurable, and all the insurable property is located outside the boundary of the SFHA. In these cases, the property is considered as not in an SFHA.
- f. Property Subject to Flood Insurance Requirement. We require flood insurance on the real estate, contents and any other improvement which can be insured:

- (1) For a homeowner, the property subject to the flood insurance requirement includes the residence, contents (personal property), and appurtenant structures;
- (2) For a residential tenant, the property is the contents (personal property); and
- (3) For a business which operates in its own building, the property is the building, contents, and appurtenant structures.

g. Statutory Requirements for Property Located in an SFHA. The Act requires that, as a condition of any Federal assistance secured by improved real estate (or a manufactured home) located in an SFHA, the building and any personal property securing the loan must be covered by flood insurance before any loan disbursement. Additionally, any loan used for construction purposes in an SFHA is subject to this requirement. Specific provisions govern certain circumstances, as follows.

- (1) If the property is located in a community under sanction, flood insurance is not available and applicants can't meet the statutory requirement. Therefore, applicants in a community under sanction are ineligible. This bar applies even if the property is wholly uninsurable. However, applicants who relocate to a participating community will be able to meet the statutory requirement and are eligible. Similarly, applicants who relocate to a site not in an SFHA (whether or not in a community under sanction) are not subject to the statutory flood insurance requirement. You must require a notice of disqualification for all relocations from an SFHA in a sanctioned community (see subparagraph 37.h.(2)(c) & (d)).
- (2) We may encounter a nonparticipating community where less than 1 year has elapsed since the flood hazard boundary map effective date. Although NFIP flood insurance is not yet available, these communities are not under sanction and loans may be approved to applicants in these communities without a statutory or regulatory requirement to obtain flood insurance. These loans must be approved within 1 year of the flood hazard boundary map effective date. The date of the loan approval (obligation of funds) governs whether this exception applies. Neither the date of the disaster nor the date of the application is relevant.

- (3) If the property is wholly uninsurable (e.g., a driveway and bulkhead on otherwise unimproved land), don't require flood insurance. If there is a question of insurability, use the standard flood insurance condition. If evidence is submitted to show uninsurability, the condition has been satisfied because the borrower has obtained the maximum coverage available, which is none, and need not be removed by loan modification action.

h. Amount of Coverage Required By Law.

- (1) Our regulations require that flood insurance coverage be in an amount equal to the insurable value of the property, or the maximum coverage available, whichever is less. Neither the statutory nor regulatory requirements apply to property not located in an SFHA, regardless of whether in a community under sanction or a nonparticipating community.
- (2) If flood insurance is required by the Act and the regulations, you must include the standard flood insurance condition in the LAA. This condition:
 - (a) Requires the borrower to obtain and maintain the insurance in the full insurable value of the property;
 - (b) Warns the borrower of future ineligibility if the insurance is not maintained; and
 - (c) Requires SBA be named as mortgagee or loss payee on secured loans.

i. Policy Requirement and Amount of Coverage for Secured Loans.

- (1) If flood insurance is not required by the Flood Disaster Protection Act of 1973 (as amended), SBA will require flood insurance (without further justification) on the real and personal property as a matter of policy when:
 - *(a) Rising water caused the flooding. However, flood insurance is not required if the cause of the flooding would not have been covered by NFIP flood insurance, e.g., groundwater seepage or sewer backup (unless these are part of general flooding in the area that also involves this victim), runoff or channeled water (unless the surface flooding in the flooded area was caused by runoff or channeled water) or wind driven water (e.g., where gale force winds damage a roof or blow out windows permitting rain water to cause damage inside the structure); and*
 - (b) The flooding caused damage to insurable real and/or personal property (including basements of insurable structures); and

- (c) The borrower owns the real property that has been damaged by the flood or is responsible for making repairs to the damaged property.
 - (2) If the flood damaged property is not taken as collateral, the damaged property must still be covered by flood insurance.
 - (3) The amount of coverage will be the lesser of:
 - (a) The total of the disaster loan and all prior liens on the flood damaged real and/or personal property; or
 - (b) The maximum flood insurance available on the flood damaged real and/or personal property; or
 - (c) The maximum insurable value of flood damaged real and/or personal property; or
 - (4) If the flood insurance would be required under this subparagraph but the disaster victim is not able to obtain the insurance because the property is in an unmapped or sanctioned community, you can delete the standard flood insurance clause in the loan authorization. You must justify this deletion in the Loan Officers Report.
- j. Flood Insurance Coverage for Other Loans. If the disaster-damaged property, is not located in an SFHA, but is subject to risk of flood loss (e.g., the loan is to repair flood damage, such as M&E, etc., or the property has been repeatedly flooded), we may require flood insurance in situations other than as described above. You must justify this requirement in the LOR. Generally, the amount of coverage will be the lesser of the loan amount or the maximum insurance available.
- k. Alternatives to National Flood Insurance Coverage.
- (1) Insurance coverage for flood losses from carriers other than NFIP is an acceptable alternative, provided the community where the property is located is participating in NFIP. The coverage must:
 - (a) Be a standard NFIP flood insurance policy, and be issued by an insurer licensed to do business where the property is located; and

- (b) Include an endorsement that the insurer must give 30 days notice of cancellation for non renewal to the insured and SBA, and include information on NFIP in that notice; and
 - (c) Guarantee that coverage is at least as broad as offered by the standard NFIP flood insurance policy and contain a mortgage interest clause similar to the one in the standard NFIP flood insurance policy.
- (2) Insurance coverage for flood losses from carriers other than NFIP is not permitted if the community where the property is located is not participating in NFIP.
- l. Evidence of Purchase of Required Flood Insurance Coverage. The LAA requires the borrower to submit evidence of the purchase of the required flood insurance coverage to SBA prior to any disbursement. Evidence means a copy of the issued policy or other proof of the coverage obtained. A copy of application for insurance is not acceptable.
- m. Consequence of Failure to Maintain Required Flood Insurance Coverage.
 - (1) Applicants (disaster or otherwise) who were under a Federal requirement to maintain flood insurance and failed to do so, are not eligible for SBA assistance. This bar applies to nonflood disasters and to flood damage in excess of the flood insurance coverage the applicant should have maintained.
 - (2) Applicants who received flood disaster assistance that was conditioned on obtaining flood insurance under Federal law, but who did not obtain and maintain the insurance, are not eligible for Federal disaster relief as a result of later flood disasters.
 - (3) Applicants who received financial assistance from SBA through its regular business loan programs are subject to this requirement. The current LAA for these programs requires flood insurance for the business and/or collateral located in an SFHA, and that the borrower maintain it for the term of the loan. There may be cases where the borrower was not required to obtain and maintain insurance. In these cases, you must document the file to show that insurance was not required, etc., and if practical, place a copy of the authorization in the disaster loan case file.

- n. Effect of Obsolete "If/When" Condition. In the past, the LAA sometimes imposed an "if/when" or "when identified/when available" condition. This condition is unenforceable.

52. EFFECT OF FLOODPLAIN MANAGEMENT (EXECUTIVE ORDER 11988) AND WETLANDS PROTECTION (EXECUTIVE ORDER 11990) REQUIREMENTS (SEE 13 CFR 120.172)

These Executive orders apply to applicants with total eligible damage (inventory, M&E, structures, facilities, etc.) in excess of the regulatory limit when all of the following apply.

- a. The applicant qualifies as an MSE and the proposed loan approval is more than \$1,500,000.
- b. Sustained damage to structures and/or facilities equals 50 percent or more of their predisaster value.
- c. The damaged real property (structures and/or facilities, etc.) is situated within a 100-year floodplain (Zone A).

NOTE: If an approved loan to an applicant suffering damage as detailed above would constitute a critical action, the two Executive orders apply if the damaged real property is situated within a 500-year floodplain. Critical actions are defined as applications from:

- (1) Nursing homes, hospitals, medical clinics, etc., whose occupants lack mobility and any flood can result in the loss of life; and
- (2) Liquefied natural gas terminals and facilities producing and storing highly volatile, toxic, or water-reactive materials.

53. ANTI-DISCRIMINATION COMPLIANCE REQUIREMENTS

- a. Applicant's Agreement of Compliance. Whenever disaster loan funds of more than \$10,000 are allocated for construction, we require all borrowers to execute SBA Form 601, "Applicant's Agreement of Compliance".

- b. Special Provisions Applicable to Business Loans. All business concerns receiving disaster assistance must agree not to discriminate in any business practice, including employment practices, on the basis of race, sex, or other categories cited in 13 CFR, parts 112 and 113. SBA Form 722, "Equal Employment Opportunity Poster," and SBA Form 793, "Notice to New SBA Borrowers," are given to all business borrowers at the time of loan closing to inform them of their civil rights compliance requirements.

54. REQUIREMENTS FOR REAL ESTATE REPAIR

The dollar amount of a disaster loan for R/E dictates whether conditions are automatic (standard requirements) or optional (additional requirements).

- a. Standard requirements apply to both unsecured and secured loans. They are activated when you use the standard UP codes for R/E repair. Refer to the LAA standard text for complete conditions. These conditions advise the borrower that:
 - (1) All other funds received for damages and/or necessary to complete construction/repair must be injected into the project prior to SBA's loan disbursement. This protects the Agency from investing in a project that cannot be completed.
 - (2) Lead based paint is prohibited on certain interior and exterior surfaces.
 - (3) Borrowers must submit a valid building permit, or evidence that local authorities do not require a permit for all secured loans. Based on local requirements, when area counsel or designee determines that permits are not necessary, we consider the condition met without specific evidence from each borrower.
- b. Additional requirements. You must include these additional requirements if the R/E portion of the loan is \$25,000 or more (refer to the Catalog of Optional Loan Authorization Text for complete conditions):
 - (1) The borrower must submit a written construction contract prior to disbursement of R/E funds;
 - (2) The borrower must submit evidence that the contractor carries Builder's Risk and Workman's Compensation Insurance prior to disbursement of any R/E funds; and
 - (3) SBA may require the borrower to submit lien waivers from contractors, sub-contractors, etc., as appropriate.

NOTE: If during disbursement the borrower cannot satisfy these specialized conditions, and evidence in the file demonstrates SBA is adequately protected, area counsel may waive any of these conditions with written justification in the file and with written notice to the borrower.

- c. Performance Bonds. Responsibility for contractor selection rests with the borrower, but we encourage the use of bonded contractors. On rare occasions, we may require that the borrower's contractor(s) post a performance bond. Generally, we require a 100 percent bond executed by a corporate surety approved by the Treasury Department naming the borrower as obligee on the American Institute of Architects Form or comparable coverage. SBA is not to be named as obligee, nor is the term "completion bond" to be used. Do not require this when using a take-out commitment. This is a credit judgment that generally arises on major construction projects and involves discussion among LV, LP, and legal. You must justify this requirement in the LOR and add the appropriate conditions to the LAA.
- d. "Do-It-Yourself" construction may involve increased risk of substandard construction or unforeseen cost overruns. Using a take-out commitment will reduce our exposure to such risks. You must determine when do-it-yourself construction is involved and if a take-out commitment is needed based upon the following.
 - (1) If the R/E portion of the loan is \$25,000 or more, write the entire portion as a take-out commitment. Based on the scope of the project, the applicant's resources and qualifications, etc., you may waive this requirement with justification in the LOR.
 - (2) If the R/E portion of the loan is less than \$25,000, you should consider progress inspections in lieu of a take-out commitment.
 - (3) Take-out commitments do not apply to unsecured loans.
- e. Provision for Seismic Safety. All new building construction financed by a disaster loan must meet the seismic safety requirements specified in the National Earthquake Hazards Reduction Act of 1977. Use of UP codes 18 or 19 will automatically trigger a specific condition in the LAA. In rare cases of custom UPs, the LO must add this condition to the draft LAA:

"Prior to disbursement of loan funds for real estate construction or repair of an entirely new building or new addition to an existing building, Borrower will submit evidence satisfactory to SBA that such construction meets the '1988 National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Construction.' Such evidence may be in the form of a copy of a building permit which complies with the seismic requirements of the 1991 International Conference on Building Officials (ICBO), 1992 Supplement to the Building Officials and Code Administrator (BOCA), or the 1992 Amendments to the Southern Building Code Congress (SBCC), or equivalent model, building codes or a certificate by a licensed construction engineer, architect, or similar professional."

55. CONDITIONS RELATIVE TO LEASED PREMISES

Applicants may own real estate improvements or leasehold improvements which are located on leased premises. When repair, replacement, or construction are necessary, you must carefully review the terms and conditions of the lease, and require appropriate conditions in the LAA as follows.

- a. Requirements for Real Estate Construction or Repair. The same criteria for imposing standard or additional requirements for real estate construction or repair of owned property apply to any R/E or LHI located at leased premises.
- b. Lease Extension Requirement. If the existing lease is for a period at least equal to the proposed loan term, there will generally be no special risk. If the lease is shorter than the recommended loan term, there is likely to be a significant risk, and the procedures below must be followed.
 - (1) If practical, require an extension of the lease for a period equal to the term of the loan. Use the standard lease extension condition in the LAA.
 - (2) If an extension is not practical, the question of who owns the real estate/leasehold improvements at the expiration of the lease becomes crucial. You should consult with counsel as necessary to interpret these leases.
 - (a) If the applicant has no right to remove the improvements, the applicant does not actually own the improvements in fee, since they become property of the landlord at the expiration of the lease. In these cases we limit eligibility to the use value for the remaining term of the lease (unless the lease is extended).

- (b) If the applicant has the right to remove the improvements at the end of the lease, you must consider:
 - (i) If the applicant plans to remove the LHI and relocate;
 - (ii) If relocation is practical;
 - (iii) If we can authorize relocation; and
 - (iv) If the applicant can finance the relocation.
- (3) As an alternative to a lease extension, you may require other or additional collateral.
- c. Lease Requirement. If the borrower does not have a formal, written lease, the LAA should require the borrower to obtain a lease "satisfactory to SBA."
- d. Lease Modification Requirement. If any of the terms and conditions of an existing lease are unsatisfactory, the LAA should specify the necessary changes.
- e. Landlord's Waiver Requirement. Generally, we require borrowers to obtain a landlord's waiver providing SBA employees with free access to the leased premises in case of default or foreclosure to remove collateral items. A landlord's waiver is not necessary when we have an assignment of the lease as collateral or have not taken security interests in any property in the leased premises.

56. USE OF LOAN PROCEEDS

You must use authorized use of proceeds (UP) codes to prepare draft LAAs for physical and economic injury disaster loans. These are:

a. Home Loans.

UP-01	Personal Property
UP-02	Motor Vehicle (automobile, pickup truck, minivan, etc.)
UP-04	Manufactured Housing
UP-05	Refinance Real Estate Lien
UP-06	Refinance Manufactured Housing
UP-17	Repair/Replace Real Estate
UP-18	Purchase/Construct Relocation Real Estate

UP-19	Total Real Estate Reconstruction (at damaged site)
UP-20	Landscaping
UP-24	Debris Removal
UP-25	Other Land Improvements (including bridges, retaining walls, etc.)
UP-00	Custom Use of Proceeds (disaster mitigation measures; engineering fees; architectural fees; seismic reports; moving expenses [mandatory relocation only]; other usual items; etc.)

b. Business Loans.

UP-17	Repair/Replace Real Estate
UP-18	Purchase/Construct Relocation Real Estate
UP-19	Total Real Estate Reconstruction (at damaged site)
UP-20	Landscaping
UP-24	Debris Removal
UP-25	Other Land Improvements (including bridges, retaining walls, etc.)
UP-50	Inventory
UP-51	Machinery and Equipment (includes motor vehicle, boat, airplanes, etc.)
UP-52	Furniture and Fixtures
UP-53	Leasehold Improvements
UP-58	Refinance Real Estate
UP-59	Refinance Machinery and Equipment
UP-00	Custom Use of Proceeds (disaster mitigation measures; engineering fees; architectural fees; seismic reports; moving expenses [mandatory relocation only]; other usual items; etc.)

c. Economic Injury Disaster Loans.

UP-60	Working Capital
UP-61	Working Capital with Periodic Disbursements
UP-62	Note Payable
UP-63	Accounts Payable

57. DISBURSEMENT PERIOD

- a. Standard disbursement periods are not more than 12 months. The AD may, on a disaster by disaster basis, reduce the standard time frame to 6 months. The LAA must include a limit, and provide notice of the need to obtain our approval for any extensions which might become necessary.
- b. Disbursement periods may need to be extended, especially in cases of substantial R/E construction, when permit delays were encountered, or when disaster devastation has affected a large community and stalled rebuilding.

*58. GENERAL LOAN CONDITIONS FOR LARGE LOANS (GREATER THAN \$1 MILLION)

- a. Net Earnings Clause must be used in loan authorizations as follows:
 - 1. All no-credit available elsewhere loans with an initial maturity of 15 years or longer,
 - 2. The percentage of net earnings to be applied to the loan balance must be between 5% and 10% at the loan officer's discretion, and
 - 3. The payment may be quarterly or spread over 12 months if a financial hardship can be demonstrated.
- b. Distribution and Compensation clause must be used in loan authorizations to include a limit on direct and indirect compensation (of all types) to the owners and officers of the business. Additionally, other transfers such as a lease payment to an owner of the company who also owns the building used by the company must also be limited.
- c. Stock Offering clause must be used in loan authorizations that give SBA the option to require payment in full on the loan in the event that the borrower sells additional securities. This clause will be invoked for a private placement or public offering of securities (common or preferred stock or long term debt with an equity feature).
- d. In those rare cases when a loan officer determines that a net earnings clause, distribution and compensation clause, and a stock offering clause are not appropriate for a particular credit, the reasons must be fully documented in the LOR. While the General Loan Conditions are mandatory for large loans (greater than \$1 million), the conditions may be appropriate for loans of \$1 million or less.*

CHAPTER 6

REGISTRATION, INTERVIEWING AND SCREENING59. DEFINITIONS

- a. National Teleregistration Center (NTC). The FEMA staffs and operates NTCs in various locations. These nonpublic facilities are active only in Presidential disasters, and are designed to be the first contact point for disaster victims seeking assistance (via a toll-free phone number). The NTC:

- (1) Registers victims;
- (2) Identifies those qualified to receive a FEMA referral [see (f) below]; and
- (3) Provides information about on-site locations and dates of openings and closings.

NOTE: The SBA representatives are stationed at NTCs to answer disaster victims' questions and initiate mailing of application packages.

- b. Disaster Field Office (DFO).

- (1) FEMA DFO: The FEMA and the State establish a nonpublic facility to coordinate activities of all the participating disaster relief agencies and organizations. Usually, the participating agencies and organizations have representatives present at the DFO to conduct and monitor their own internal operations and to assist in the inter-agency coordination effort.
- (2) SBA DFO: The SBA establishes a nonpublic facility to coordinate its activities in Agency declarations. In Presidential declarations the SBA DFO is usually co-located with the FEMA DFO.

- c. A Disaster Recovery Center (DRC) is a FEMA operated facility where representatives of all participating Federal, State, and local disaster relief agencies and organizations assemble to issue program applications and related information. Depending on the size and scope, FEMA may set up more than one DRC. The SBA is represented in each DRC.

- d. A Workshop is an SBA operated facility where disaster victims can return completed applications or receive help in the completion of their forms. Depending on the size of a disaster, we may establish more than one workshop. The term workshop is only used in Presidential declarations. Often the workshops are part of the DRC.
- e. An Outreach Center is the SBA equivalent of a DRC for Agency declarations. Disaster victims may obtain loan applications and return them to any outreach center. Depending on the size of a disaster, we may establish more than one outreach center.
- f. Decline - Automatic (DECA). In Presidential declarations, home loan applicants whose household incomes are below the minimum income levels stated in the Income Test Tables (provided by SBA) are classified as DECAs. They are referred by the FEMA registrar directly to IFGP, bypassing the SBA process. For statistical purposes DECAs are not counted as SBA interviews.
- g. A Summary Decline is an SBA action (rule-of-two required) resulting in immediate referral to IFGP. This action is appropriate if repayment ability is not evident using the FDM during an individual interview or while screening a home loan application. We can issue summary declines up to the time of docketing. For reporting purposes, we count them as SBA interviews and summary declines.

60. FEMA REGISTRATION AND THE SBA INTERVIEW PROCESS

- a. FEMA Registration Process - Presidential Disasters.
 - (1) Home loan inquirers who visit a DRC or call the NTC are registered on FEMA Form 90-69, "Disaster Assistance Registration." Those not classified as DECA are referred to SBA. We will issue an application or initiate a summary decline.
 - (2) Business loan (including EIDL) inquirers who visit a DRC or call the NTC are also registered using FEMA's 90-69. However, because there are no DECAs for business applicants, all inquirers are referred to SBA. We use SBA Form 700, "Disaster Business Loan Inquiry Record," to document business/EIDL interviews and record essential business information the FEMA 90-69 does not include.
- b. SBA Interview Process - Agency Declarations. You must use an SBA 700 to document all interviews.

61. INTERVIEWER'S RESPONSIBILITIES

- a. Initial Interview (DRC or NTC). This is your first contact with a disaster victim. Their perception that SBA is ready, willing, and able to effect a speedy recovery through its loan program depends on how well you explain:
 - (1) The program;
 - (2) How to complete the application forms;
 - (3) The importance of fully complying with our filing requirements; and
 - (4) That free help filling out the forms is available at a workshop or outreach center.
- b. The purpose of the initial interview is to determine whether the disaster victim and the damaged property are generally eligible, and to explain the application forms and process in simple terms. After thoroughly explaining the program, furnish the disaster victim with the appropriate application forms and instruct them to return the forms by the application filing deadline. You must not make final eligibility determinations at the initial interview stage. If it is obvious that the applicant or the property is not eligible (e.g., the applicant doesn't own the property or the property is not located in a declared area) you must inform the applicant of the potential decline action and give them the opportunity to refuse the application.
- c. Reporting (counting) the interview. You must ask victims who arrive for an SBA interview if they have registered with FEMA. If not, direct them to a FEMA registrar or the NTC. However, if they have previously registered, you must exercise care to avoid counting an interview or application issued more than once. This is important when an applicant previously registered by phone with the NTC and subsequently went to a DRC to obtain an application, rather than waiting for the one which was mailed from the NTC. Should this occur, provide the application(s) but do not count the applicant's request for a second application as either an interview or application issued.
- d. Referral by SBA.
 - (1) In Presidential declarations we may determine that applicants with household incomes above the income test table threshold also lack repayment ability. However, because the table assumes little or no debt, you must:

¶61

- (a) Determine their gross income and monthly fixed debt;
 - (b) Include any extraordinary expenses (e.g., unusually high and long-term medical costs, child care, child support, etc.); and
 - (c) Apply the preliminary FDM approach to determine if we issue an application or a summary decline. An application will generally not be issued when the household Gross Annual Income (GAI) is \$25,000 or less and the Monthly Fixed Debt (MFD) exceeds 45 percent of the GAI. If household GAI exceeds \$25,000, MFD should not exceed 55 percent. The AAD/LP may adjust the MFD percentage by as much as 5 percent (either up or down) based on local conditions in any particular disaster.
 - (d) Issue an application without applying the preliminary FDM approach when the victim indicates that he/she is a sole proprietor of a business or has household income which includes rents, farms or other non salary sources (but not including disability, social security, pensions, etc.), or has household income in excess of \$50,000.
- (2) In summary decline situations, SBA Form 1363, "Summary Decline Letter," is prepared in triplicate. The original SBA 1363 is signed by an SBA employee and given to the disaster victim, one copy is distributed to FEMA/IFGP and one copy is retained for SBA's records. The applicant must sign the reverse of SBA's copy of the FEMA 90-69, or, as appropriate, an SBA 700 and an SBA 1363.
- (a) For reporting purposes you should count a disaster victim who receives a summary decline at the interview stage as an SBA interview and a summary decline. A home loan application resulting in a summary decline at screening is not:
 - (i) Docketed;
 - (ii) Counted as an application received; or
 - (iii) Returned to the applicant.
- NOTE: For reporting purposes, these applications are summary declines and should be associated with SBA's copy of the FEMA 90-69 or SBA 700, as appropriate.
- (b) Summary decline procedures do not apply to Business or EIDL inquirers.
- (3) In Agency declarations, the ARC or others often assist disaster victims unable to qualify for a loan. When an Agency declaration is issued, we will inform our personnel if ARC is accepting referrals. If ARC or other organizations accept referrals from SBA at the interview or screening stage, we modify the SBA 1363 and use it like a summary decline. Report these interviews in the same manner as in subparagraph 61.d.(2)(a).

62. INTERVIEW TOPICS

- a. Home and Physical Business Loans. Thoroughly discuss the purpose of the program with the inquirer. You must cover the following: loan limits; property eligibility; ownership and location of the damaged property; terms; interest rates; and possible mortgage refinancing, if appropriate.
- (1) Repayment Ability. Issuing a loan application does not guarantee that we will approve the loan. We examine FTR/income information to substantiate repayment ability, and review credit reports to determine if obligations, including any current or past Federal debts, have been or are being met.
 - (2) Secondary Home Ineligibility. A secondary home and its contents are not eligible for home loan consideration, but may be eligible as rental property under the business loan program.
 - (3) Condominiums, Homeowner Associations, etc. All home loan inquirers must be asked if ownership of the damaged real property is part of an association. If so, follow the guidance provided in paragraphs 24 and 25 and note the SBA 700 or the FEMA 90-69 form.
 - (4) Relocation. There is a statutory prohibition against using SBA disaster loan funds to voluntarily relocate outside the business area where the disaster occurred (see paragraph 37).
 - (5) On-Site Verification of Damage. The dollar amount of physical loan eligibility is based upon an on-site inspection of the damaged property by a LV. Applicants, prior to the time of inspection or even the interview, may dispose of damaged property or debris for health and safety reasons or avail themselves of free or low cost disposal services. Suggest (but do not require) pictures, written lists or receipts for property prior to removal if practical. Debris removal is a part of the recovery and should not be unduly burdened by our requirements.
 - (6) Insurance Coverage/Proceeds/Requirements. There is a statutory (Section 7(b), Small Business Act) prohibition against providing assistance to applicants whose losses are covered by insurance or otherwise compensated. You must ask if any insurance coverage was in force on the damaged property, and if a settlement was received. If so, you must advise the applicant not to voluntarily apply any proceeds to reduce

existing mortgage(s). Explain that if the proceeds can be used in restoration, we will deduct them from eligibility. If we approve the loan we may require the borrower to purchase and maintain flood insurance and/or hazard insurance.

- (7) Information Required. You must tell the inquirer to comply with the filing requirements listed in the applications.
- (8) Application Filing Deadline(s). You must enter the date of the filing deadline on the application.

b. Economic Injury Disaster Loans (EIDL). You must thoroughly discuss the purpose of the EIDL program with the inquirer. Although you can't make eligibility determinations at the interview stage, you must tell the disaster victim that only eligible small business concerns and small agricultural cooperatives unable to obtain credit elsewhere are eligible, and then only to the extent that business and personal financial resources have been fully utilized to offset the economic impact of the disaster.

- (1) Repayment Ability. Issuing a loan application does not guarantee that we will approve a loan. We examine FTR/income information to substantiate repayment ability and review credit reports to verify the manner in which obligations, including current or past Federal debts, are being or have been met.
- (2) Legislative Loan Limit. The amount of an EIDL, together with all business companion physical damage loans, must not be more than the \$1,500,000 limit.
- (3) Relocation. There is a statutory prohibition against using SBA disaster loan funds to voluntarily relocate outside the business area where the disaster occurred (see paragraph 37).
- (4) Insurance Coverage/Requirements. There is a statutory prohibition against providing assistance to applicants whose losses are covered by insurance or otherwise compensated. You must ask the inquirer if any business interruption insurance coverage was in force and if a settlement was received. If we approve a loan, we may require the borrower to purchase and maintain hazard and/or flood insurance depending on the amount of the loan. The provision for voluntary application of business interruption insurance proceeds to reduce outstanding indebtedness applies similarly to voluntary application of physical insurance proceeds.

- (5) Information Required. You must tell the inquirer to comply with the filing requirements in the application, including the SBA Form 1368.
- (6) Application Filing Deadline. You must enter the filing deadline on the application.

63. HOME LOAN APPLICATION FORMS

The following forms are contained in every home application package:

- a. SBA Form 5C, "Disaster Home Loan Application;"
- b. SBA Form 739, "Verification of Personal Property Damage;"
- c. IRS Form 8821, "Tax Information Authorization;"
- d. SBA Form 1621, "Estimated Average Burden Hours per Information Requirement;"
- e. DAD 1 pamphlet. (Informational brochure); and
- f. Fact Sheet.

64. BUSINESS LOAN APPLICATION FORMS

The following forms are contained in every business application package:

- a. SBA Form 5, "Disaster Business Loan Application;"
- b. SBA Form 739A, "Verification of Disaster Business Loss" (physical disaster only);
- c. SBA Form 413, "Personal Financial Statement" (for each proprietor, each limited partner who owns 20 percent or more interest, each general partner, each stockholder owning 20 percent or more voting stock);
- d. IRS Form 8821, "Tax Information Authorization" (for each proprietor, each limited partner who owns 20 percent or more interest, each general partner, and each stockholder owning 20 percent or more voting stock; and each affiliate);

- e. Schedule of Liabilities;
- f. SBA Form 1621, "Estimated Average Burden Hours per Information Requirement;"
- g. DAD 2 and 3 pamphlets (informational brochures);
- h. SBA Form 1368, "Additional Filing Requirements for EIDL;" and
- i. Fact Sheet.

65. APPLICATION TO BE USED FOR RENTAL PROPERTIES

- a. General Rule. For sole proprietors who own no more than four rental units, use a home loan application package for physical and EIDL loan requests. You must write "RENTAL" in the upper right corner of the SBA 5C. For any other type of ownership and/or when more than four rental units are owned, use the business loan application package.
- b. Definition of Rental Unit. A unit can be either residential or commercial. Rental unit can be a single family detached house, a single apartment, a half of a duplex, a third of a triplex, a quarter of a quadruplex, or a piece of vacant land, etc. In the case of master leases such as shopping mall leases to a lessee who in turn sublets individual units to sublessees, or leases which permit the lessee to sublet rooms or apartments in a building, the number of rental units is the number of subleases and the master lease is ignored.
- c. Docketing Provisions. Rental applications received on the SBA 5C are docketed with suffix "R." All other rentals use suffix "B."

66. FILING PERIOD

- a. For physical loss applications, 60 days after date of declaration.
- b. For economic injury applications, 9 months after date of declaration.
- c. For EIDLs pursuant to Secretary of Agriculture designations, 8 months from the Secretary's designation.

- d. Extensions. The FEMA or SBA may authorize extensions of the filing period.
- e. Late Filed Applications.
 - (1) The AAD/LP must take final action on all late application requests.
 - (2) Generally, applications postmarked within the 15-day grace period of the filing deadline do not require a written request for late filing from the applicant.
 - (3) Applications delivered in person or postmarked after the grace period require the applicant's written explanation for the late filing. These requests are only accepted if we determine the late filing resulted from substantial causes essentially beyond the applicant's control.
 - (4) When an application is received after the filing deadline without a request for late-filing, the screener must contact the applicant by telephone (when possible) to determine the reason(s) for the late filing. If contact is not made, screen and return the application with a return notice and require a written request for late filing and explanation for the late filing. If telephone contact is made and the screener determines that late acceptance may be justified based upon the applicant's reasons, impose the 4-day hold procedure used for unacceptable applications, [see subparagraph 69.g.(1)].

67. PLACE OF FILING APPLICATIONS

Normally, disaster loan applications are returned in person to either a DRC, workshop or outreach center. Applications returned by mail are sent to either the DFO or area office. We may receive applications from victims who suffered losses in more than one state that were caused by the same disaster. The area office serving the state where the disaster victim's residence (if a sole proprietor) or home office (if a partnership or corporation) is located processes these applications.

68. RESERVED

69. SCREENING PROCEDURES

Screening is the process of examining applications to determine if they are acceptable. You should try to screen applications delivered in person while the applicant (or representative) is present.

a. Screeners' Responsibilities. Screeners must:

- (1) Use the appropriate checklist (home or business);
- (2) Determine the status (acceptable or unacceptable);
- (3) Prepare the appropriate notice when needed (14 day or return);
- (4) Not write on the application or supporting information (except date stamping and recording ethnic and gender codes);
- (5) Require the applicant or representative to initial and date changes (if the applicant is infirm or illiterate, the screener may do so but must document the screening checklist);
- (6) If the application is docketed, remove the "Statements Required By Laws" section, if still attached, and return to the applicant; and
- (7) Make no changes to the application or supporting information received by mail.

b. Definition of Acceptable and Unacceptable Applications.

- (1) Acceptable applications meet all filing requirements, or are those which are signed and are reasonably completed (e.g., contain all required IRS 8821s, and, if physical, include a reasonably completed SBA 739 or SBA 739A). Additionally, when screening a business application for a corporation (IRS Form 1120 or 1120S), partnership (IRS Form 1165) or non-profit organization (IRS Form 990), copies of the federal tax returns will be required as a filing requirement. However, if the business application does not include the federal tax returns, a 14-day letter must be sent as described in subparagraph 69.c. requesting the federal tax returns and the file must be accepted as complete.

- (2) Unacceptable applications are those to which any of the following apply: (a) the application form is not signed or not reasonably completed; (b) the SBA 739 or SBA 739A is not reasonably completed; or (c) a fully completed and signed IRS 8821 is not provided for each required taxpayer or entity.

c. Definition of 14-Day Letter and Return Notices.

- (1) 14-day letters are prepared by screeners and used for requesting missing information needed to make a processing decision on an otherwise acceptable application. A lack of response to this request by the end of the 14-day period may result in withdrawal of the application.
- (2) Return notices are prepared by screeners and used only for unacceptable applications. They are written notification returning the application and requesting information needed to make the application acceptable.

d. Date Stamping. You must date stamp each application to record the actual date it was received by the Agency.

- (1) At screening, date stamp only the application. The screener must record on the checklist each item received with the application.
- (2) When a date stamp is not available, hand write the date of receipt. In all cases, record the actual date of receipt, not the date the mail is opened or the document is reviewed. If the volume of mail prohibits opening and date stamping all material received when received, hold each day's mail separately and record the actual date of receipt as time permits.
- (3) You must date stamp each document received subsequent to screening to record the actual date of receipt. However, when the applicant submits forms or documents under a cover letter, listing the information enclosed, or returns forms or documents with a copy of a 14-day letter, it is permissible to date stamp the cover letter or SBA's notice rather than each individual form or document. The person reviewing the submission for completeness must initial each item on the letter and indicate the item has been received.

- e. Summary Decline at Screening. In Presidential declarations, the screener must apply both the minimum income test and a preliminary fixed debt method approach. If the screener determines that the applicant falls below the minimum income test or if a home applicant lacks repayment ability, issue a summary decline at screening. Refer to paragraph 61d for preliminary FDM approach. If this occurs for applications screened with or without the victim present the screener must complete the Summary Decline Worksheet and the SBA 1363. The SBA 1363 does not require the applicant's signature, provided the application is signed. Accordingly, in lieu of the applicant's signature on the reverse of the SBA 1363, the screener must write "ON FILE" on the copy to be mailed to FEMA.

- f. Actions Following Screening. Screeners must forward all screened applications to docketing. Docket only acceptable applications. For acceptable applications, mark the docket number on the screening checklist and place the checklist in the application file. If the screener prepares a 14-day letter, mark the docket number on the letter prior to mailing the appropriate copy to the applicant. One copy of the letter must be kept in the case file.

- g. Exception to the Procedure for Returning Unacceptable Applications.
 - (1) Temporary Hold. You may temporarily hold an unacceptable application pending receipt of the missing information. This may minimize the potential for misunderstanding, avoid discouraging a disaster victim from responding to the need for information, diminish the appearance of excessive bureaucratic treatment, and expedite the applicant's correction of the unacceptable status. Temporary holds of unacceptable applications require supervisory approval and are subject to the following procedure:
 - (a) Place the annotation "U" or "unacceptable" next to the date stamp recording the date received. (By placing this annotation next to the record of the date received, we won't confuse it with a subsequent record of the date we receive the information.)
 - (b) Do not hold the unacceptable application for more than 4 business days from the date received.
 - (c) Contact the applicant. Explain what we need to accept the application. Encourage the applicant to submit the information either by fax, mail, or delivery to the DRC/workshop. Prepare and attach a chronological record to reflect all contacts or attempted contacts.

- (d) Whether to return or temporarily hold an unacceptable application depends on the circumstances and what is missing. The likelihood of the applicant's ability to supply what is needed within the 4-day timeframe should govern the decision.
- (e) If the applicant does not supply the needed information within 4 business days, return the application with the appropriate notice.
- (2) When information is received that makes the application acceptable, re-date stamp it. Also date stamp any new information.
- (3) Unacceptable applications that are returned must be re-date stamped upon re-receipt to show the date they were resubmitted.

h. Identifying Ethnicity and Gender.

- (1) Business applicants (excluding 1-4 rentals) are asked to disclose their ethnicity and gender on the loan application. Directly above each column where the questions are asked, the screener must enter a code reflecting the appropriate ethnicity and gender. If ethnicity and gender are not disclosed in the application and not apparent by observation only, the screener will enter code 6 (undetermined) and code 1 (not "women owned") for gender. (see appendix 8 for codes.)
- (2) To facilitate selecting the appropriate ethnic/racial code with respect to applications from partnerships and corporations, the following guidelines apply.
 - (a) There must be at least 51 percent ownership and/or management on the part of the general partners or corporate officers comprising a particular category. Management may be defined as the exercising of power to make policy decisions and having active involvement in the day-to-day operations of the small business concern.
 - (b) Where at least 51 percent ownership is held by minority individuals, but no single minority group reflects 51 percent or more ownership of a partnership or corporation, enter code 8.
- (3) A business is classified as women-owned if it is at least 51 percent owned by women.

- i. Accelerated processing decline (APD) is designed to shorten our process and eliminate delays in notifying applicants of a decline action. Declines for lack of repayment ability are not a basis for an APD under any circumstances. The appropriate method for declining an obvious lack of repayment ability is via summary decline, either at the interview or screening stage.
- (1) APDs apply to home, business physical, and EIDL applications.
 - (2) An APD decision must be one that almost certainly will not result in an approval if the applicant seeks reconsideration. You may only base an APD upon coded reasons 26, 27, 28, 29, 35, or 36 (see appendix 4).
 - (3) Some declarations will not be appropriate for APD activity. For example, in a small disaster in a remote location (e.g., Alaska, a localized fire, etc.) it may be beneficial to verify all known disaster sites, even though we may not receive an application from every victim.
 - (4) The APD Sequence is as follows:
 - (a) Docket the application.
 - (b) Obtain credit bureau report(s) (CBR) for the applicant(s).
 - (c) An experienced LO must review the CBR and loan application to determine if the application falls within APD criteria.
 - (i) If an APD is warranted, complete an LOR (as stipulated in appendices 18 and 19) and obtain SLO concurrence (rule of 2 applies). The file is then forwarded for preparation of the standard APD decline letter.
 - (ii) If an APD is not warranted, process the application in the normal fashion.

70. RESERVED

CHAPTER 7

PROCESSING OF APPLICATIONS71. PRELIMINARY STEPS IN LOAN PROCESSING

- a. Determining File Age. You must review each case file for "file age" as you receive it. File age is the number of days from the date SBA receives the application, either in the field or at the area office, to the current date. You must process the oldest files first, unless your supervisor instructs you differently.
- b. Reviewing Each File for Completeness.
 - (1) You must first review the screening checklist and the overall file content. If a file is incomplete for processing, you must:
 - (a) Contact the applicant by telephone; and
 - (b) Obtain the missing information by phone whenever possible.
 - (2) If a 14-day letter is necessary, it must:
 - (a) Clearly state the needed information;
 - (b) Caution the applicant that we will withdraw their application if we don't receive the information in 14 calendar days (see paragraph 82 for withdrawal procedures); and
 - (c) Not request information not relevant to the credit decision (e.g., deeds, leases, death certificates, etc.).

NOTE: You should use one 14-day letter to request information for companion files.
- c. Making Initial Telephone Contact. When you initially contact an applicant by phone, you must do the following.
 - (1) Always give your full name.

- (2) Use language similar to the following: "I am calling to discuss your SBA disaster loan application. This will help me process your application. However, no decision has been reached yet and nothing I say should be interpreted as a likely favorable or unfavorable decision."
- (3) Always inform applicants that anything said during the course of loan processing is not official notification of approval or disapproval of their loan request and no Agency decision is final until they receive it in writing.

d. Requesting Reverification.

- (1) If an applicant does not agree with the LV's damage estimate, you must advise applicants that requests for reverification must:
 - (a) Be in writing; and
 - (b) Be accompanied by documentation that the cost to restore the property to predisaster condition is more than the amount in the LV report.
- (2) You should discourage (delay) reverification requests until after you determine the likelihood of loan approval. If repayment ability is not evident using the original LV report, the outcome cannot change unless the reverification:
 - (a) Results in refinancing eligibility; and
 - (b) This additional eligibility is sufficient to overcome a lack of repayment ability. (If decline was indicated for other than repayment reasons, a reverification could not alter the outcome.)

72. APPLICANT'S REPRESENTATIVE

SBA Forms 5 and 5C require a listing of attorneys, accountants, appraisers, and other representatives an applicant retains, and any present or future compensation for their services. You must not discuss the case with anyone whose name does not appear on the application unless the borrower authorizes us, in writing, to do so.

- a. We don't require applicants to engage the services of any professional to file an application. When an applicant engages a representative, the representative may charge or receive payment only in connection with the preparation of the application or loan closing (see SOP 70 03).

- (1) Generally, fees should not be more than:

- (a) \$300 for disaster home loans; and
 - (b) \$1,000 for disaster business loans, without itemization and justification of the services.

- (2) When we require itemization, the AAD/LP, area counsel, or designee must review the fees. If fees exceed the general rule above, or do not provide itemization when necessary, refer the matter to the AAD/LP, area counsel, or designee.

- b. SBA Form 370, Representative Index

You must complete SBA Form 370, "Representative Index" for all representatives listed on the application. These are filed alphabetically in the area office.

- (1) You must advise the AAD/LP immediately if, during processing, you learn that an applicant's representative:
 - (a) Has stated that SBA approval is contingent upon professional preparation or the application; or
 - (b) Has stated that he or she is able to get the disaster loans approved; or
 - (c) Generally advertises that he or she gets preferential treatment from, or has special influence or contacts within the SBA; or
 - (d) Has charged a fee to prepare disaster loan applications, but has refused to be named on the application; or
 - (e) Is engaged in any other improper act.

- (2) If any of the above occurs, you must provide documentation in the form of copies of advertisements, names of people who informed us of the circumstances, etc., to the AAD/LP or area counsel so they can determine if 13 CFR 103.4 was violated. If necessary, they must notify the AD of the facts.
- (3) The AD will conduct a preliminary inquiry and determine if a violation occurred. If the facts warrant, the AD will refer the matter to OIG, along with all necessary documents and a recommendation for action.

73. DUPLICATION OF BENEFITS (DOB)

To avoid DOBs for approved loans, every LAA stipulates borrowers must promptly notify and pay to SBA any insurance proceeds or other compensation which exceeds the amount taken into consideration when we determined eligibility.

a. Deducting Compensation.

You must deduct any type of compensation specified in paragraph 44. This applies to amounts known at the time of processing, even if not actually received.

- (1) Duplication can also occur when any agency provides assistance for a loss which is the primary responsibility of another agency to provide. Each agency should, in turn, offer and be responsible for delivering its program(s) without concern about duplication with a program later in the sequence.
- (2) The sequence list determines the order in which a program should provide assistance and what other resources it must consider before it does so. Under a Presidential declaration, generally the delivery sequence is:
 - (a) Volunteer agencies' emergency assistance programs (ARC, Salvation Army, etc.);
 - (b) Temporary housing assistance, including limited home repairs or minimal repairs (MRP);
 - (c) Hazard insurance (including flood insurance);
 - (d) The SBA and Department of Agriculture disaster loans;
 - (e) The IFGP assistance;

¶73

- (f) Volunteer agencies' additional assistance programs (ARC grants or other free assistance); and
 - (g) The Cora Brown Fund (administered by FEMA).
 - (3) Occasionally, IFGP, FEMA, or similar agencies may make an out-of-sequence advance to a disaster victim financially able to borrow full SBA disaster loan eligibility. If this happens, do the following.
 - (a) FEMA will notify us of the out-of-sequence assistance by updating the DOB information it provides.
 - (b) The borrower will repay IFGP for that portion of the loan made for any eligible purpose(s). If we learn of the assistance after approval but before full disbursement, we must repay IFG via loan modification action.
 - (c) When the delivery sequence has been disrupted, the disrupting agency is responsible for rectifying the duplication.
- b. Processing Procedures. (These procedures also apply to reaccepted applications).
- (1) In Presidential declarations, do the following.
 - (a) All original home loan applications are checked for possible DOBs during processing. The DOB printout in the file lists the amount of any MRP award.
 - (b) You must check the DOB information provided by FEMA before recommending approval upon reconsideration. This avoids duplicating possible IFGP assistance.
 - (c) Any insurance or other compensation award (e.g., FEMA MRP) made after loan approval of up to \$500 for each award and \$1,000 cumulative will be considered a *de minimis* amount for duplication of benefit purposes and eliminates the need for a loan modification. The only documentation required will be a comment in the chron log of the *de minimis* amount.
 - (2) In SBA declarations, if the ARC or any other assistance program was active, we must contact them before recommending approval upon reconsideration and find out if any assistance was awarded.
 - (3) You must check with the applicant, the mortgagee, or mortgage servicing agent to verify whether hazard insurance was in force if there isn't proof in the case file. You must contact the agent and request a breakdown of insurance proceeds (settlement sheet or adjuster's proof of loss) the applicant has either received or agreed to accept. The breakdown should specify amounts for:

- (a) Damage to real, personal, or business property;
 - (b) Any additional living expenses; and
 - (c) Any business interruption and extra business expense.
- c. Do not deduct Federal Income Tax benefits from verified losses. We don't consider this a DOB even though IRS regulations permit victims to file for a refund of part or all of Federal income taxes paid in certain prior years or to carry forward any unused portion to reduce future years' Federal tax liabilities.

74. CHARACTER DETERMINATION: POLICY AND PROCEDURE

It is not in the public interest for SBA to extend financial assistance to persons who are not of good character. If any adverse information develops concerning the character or background of a disaster loan applicant, as disclosed on SBA Form 912, "Statement of Personal History," or from any other source, you must follow the procedures specified in this paragraph. In some cases, you must obtain ODA clearance before a loan may be approved. The response to a specific question on the Form 5 determines whether an SBA 912 is needed. When received, we must forward all SBA 912s to the Office of Security Operations (OSO), OIG.

- a. Fingerprint Policy and Procedure. If we receive an SBA 912 with an affirmative answer to questions 6, 7, or 8, we must determine if a fingerprint sample (obtained on FBI Form FD-258, "Fingerprint Card") is necessary. The procedure is as follows.
- (1) ADs, DADs, AAD/LPS or their designees (at least at the SLO level) determine if fingerprints are needed.
 - (2) We base the fingerprint decision on whether the criminal activity disclosed on the SBA 912 is both minor in nature and was committed more than 10 years ago. In deciding whether an offense is minor in nature, SOP 90 22 4, "Investigation Program," provides some guidance. However, consultation with area counsel may be helpful and appropriate.
 - (a) If we require fingerprints:
 - (i) Obtain the fingerprint samples on FBI Form FD-258;
 - (ii) Do not strip or forward the SBA 912 until the applicant has returned the completed fingerprint card;

- (iii) Make the following notation on the SBA 912: "912 to OSO on (date);" and
 - (iv) Forward to OSO.
- (b) If the deciding official waives the fingerprints, he/she must:
 - (i) Record the following (or similar) language in the chron log of the case file: "The SBA 912 exception for (person's name) is not considered serious. Therefore, fingerprints are not required. Authority is hereby given to process this application to conclusion;"
 - (ii) Sign and date the chron log; and
 - (iii) Make and initial the following notations on the SBA 912: "Fingerprints waived on (date)," and "SBA 912 to OSO on (date)."
- b. Persons Convicted of a Felony During and in Connection with a Riot or Civil Disorder or Other Declared Disaster.
 - (1) By statute, persons convicted during the past year of a felony during and in connection with a riot or civil disorder are not eligible ((1106(e) of P.L. 90-448). You must decline their application for policy reasons, using coded reason 43.
 - (2) If the conviction was more than 1 year ago, these applicants must complete an SBA 912 and an FBI FD-258. We cannot approve their application until we obtain ODA clearance.
- c. Criminal Arrests/Indictments/Convictions/Parole/Probation.
 - (1) General Policy - Home Loan Applicants and 1-4 Rental Applicants. We don't require these applicants to submit 912 information with their applications. We can process, approve, and disburse unless we learn that the applicant:
 - (a) Has been arrested for a criminal offense;
 - (b) Is presently under indictment;
 - (c) Has been convicted of a criminal offense; or

- (d) Is presently on parole or probation.
- (2) Exceptions to the General Policy. If any of the above exceptions apply, you must follow this procedure.
- (a) If recommending decline (for other than character reasons), the decline letter must:
 - (i) State "The character element of SBA's loan consideration procedure has not been resolved;" and
 - (ii) Require the submission of an SBA 912 (and possibly an FBI FD-258) with any reconsideration request.
 - (b) If recommending approval, you must require the applicant to submit an SBA 912, and possibly an FBI FD-258. When received, a deciding official will review the information. You then proceed as follows:
 - (i) If fingerprints are waived [see a.(2)(b) above], we can approve the application, after appropriately noting the SBA 912 and forwarding it to OSO; or
 - (ii) If an FBI FD-258 is necessary, you must withdraw the application for policy reasons (coded reason 56). We can't take any action until we obtain specific clearance from ODA.
 - (c) When ODA completes its character evaluation and notifies the area office of the decision, the AAD/LP will:
 - (i) If the applicant is found eligible, reactivate the application and have it processed; or
 - (ii) If not eligible, reactivate and decline the application for policy reasons (coded reason 43).
 - (d) Generally, we don't approve loans to applicants presently on parole or probation following conviction of a serious offense. However, notwithstanding the provisions of SOP 90 22, ODA will consider approving home and 1-4 rental applications provided the applicant provides:

- (i) Written endorsement of the applicant's good character from a reputable third party; and
- (ii) A guarantor acceptable to SBA.

The ODA's notice to the area office will specify whether it will grant a waiver upon submission of a satisfactory character endorsement and guarantor.

- (3) General Policy - Business Loan Applicants. We don't require an SBA 912 from anyone connected with the applicant if the personal history question on the Form 5 is answered "NO." Officers and directors (of for-profit or non-profit applicants) do not have to answer this question unless they are principals.
- (4) Exception to the General Policy. If this question is answered "YES," you must follow this procedure.
 - (a) If recommending decline (for other than character reasons), the decline letter must:
 - (i) State "The character element of SBA's loan consideration procedure has not been resolved;" and
 - (ii) Require the submission of an SBA 912 (and possibly an FBI FD-258) with any reconsideration request.
 - (b) If recommending approval, you must require the applicant to submit an SBA 912, and possibly an FBI FD-258. When received, a deciding official will review the information. You then proceed as follows:
 - (i) If fingerprints are waived [see a.(2)(b) above], we can approve the application, after appropriately noting the SBA 912 and forwarding it to OSO; or
 - (ii) If an FBI FD-258 is necessary, you must withdraw the application for policy reasons (coded reason 56). We can't take any action until or unless we obtain specific clearance from ODA.

- (c) When ODA completes its character evaluation and notifies the area office of the decision, the AAD/LP will:
 - (i) If the applicant is found eligible, reactivate the application and have it processed; or
 - (ii) If not eligible, reactivate and decline the application for policy reasons (coded reason 43).
- (d) Generally, we don't approve loans if the applicant or a business principal is presently on parole or probation following conviction of a serious offense. However, notwithstanding the provisions of SOP 90 22, ODA will consider applications from:
 - (i) Sole proprietors, provided the applicant provides written endorsement of his/her good character from a reputable third party and a guarantor acceptable to SBA; and
 - (ii) Partnerships and corporations, where the apparent bar to eligibility was committed independently of any official act for the business and the individual will divest all direct and indirect interest in the business.

75. EQUAL CREDIT OPPORTUNITY ACT (ECOA)

The ECOA and the laws of each State affect who SBA may or should require to sign disaster Notes, collateral documents, and guarantees. Area counsel must advise of the proper procedures and requirements for each State. The following is a general explanation of the ECOA (Title VII of the Consumer Credit Protection Act). References to "Regulation B" in this chapter are references to Regulation B issued by the Board of Governors of the Federal Reserve System which supplements ECOA.

- a. The ECOA prohibits discrimination on the basis of race, color, sex, marital status, religion, national origin, age, receipt of income from a public assistance program, and the exercise in good faith of rights under the Consumer Credit Protection Act. It applies to all the loan programs covered in this SOP including, for business loan applications, proprietors, partners, corporate officers, directors, and stockholders.

- b. We can't ask a spouse to sign a Note, guarantee, or other document solely because of marital status. However, when we rely on a spouse's income to establish repayment ability or when State law makes it necessary, we can require the spouse to sign the Note. Also, a spouse can be asked to sign all collateral documents covering property in both names which is required to perfect SBA's collateral.

NOTE: With respect to community property states, see opinion of General Counsel dated July 25, 1994, in appendix 23.

- c. Because we can't request financial information about a spouse, you can't ask whether a spouse is working and can contribute to the family income. Therefore, you must make a reasonable judgment on the amount a business owner must draw to support their dependents. If the remaining income is inadequate to repay, you must decline the loan. You can consider spousal income only when the applicant (principal) and the spouse volunteer this information. When we rely on a spouse's income for repayment ability, we may ask reasonable questions to determine the probable continuity.
- d. SBA has been ordered to submit periodic reports to the Justice Department on our compliance with the various anti-discrimination laws. Therefore, we must continue to collect statistics on sex, national origin, age, and race, according to existing instructions. We can't require an applicant to use a title such as, Mr., Mrs., Ms., or Miss, on the application form. However, since we are required to collect statistics on loans made to women, we are permitted to require an indication of the sex of the applicant for statistical purposes only.

76. CREDIT INFORMATION

a. Credit Bureau Reports (CBR).

- (1) General Requirement. All disaster loans must have a CBR. If none is available from an SBA contractor, we require a report from another reputable credit bureau or direct verification of credit references and other credit sources.
- (2) Direct Credit Checks. In some outlying areas, credit bureaus may have only minimal (if any) information on individuals and businesses. If CBRs are not informative or available, you must perform direct credit checks with banks and other sources.

(3) Who to Check.

- (a) All applicants appearing on a home loan application.
- (b) All business principals.
- (c) All businesses.

We don't permit substituting credit checks on the owners of a business in lieu of checks on the business itself.

b. Credit Information From Banks or Other Lenders.

- (1) Refinancing. Whenever a disaster loan involves refinancing, you must request specific credit information from the lienholder. You should initially attempt to obtain this information by telephone. If the lienholder(s) will not provide the information on the phone, use the credit inquiry letter format provided in appendix 9 for this purpose. This does not apply to the refunding of interim loans (see paragraph 36).
- (2) You must include the following paragraph in every SBA letter which requests credit information from a financial institution:

"This is to certify that the Small Business Administration has complied with the applicable provisions of the Right to Financial Privacy Act of 1978, Title XI of Public Law 95-630. Pursuant to Section 113(h)(2) of that Act, no further certification shall be required for subsequent access by the Small Business Administration to financial records of the customer."

- c. Business Credit Reports. All business and EIDL applications, regardless of the applicant's form of organization, require a business credit report from Dun and Bradstreet (D&B) or a similar commercial credit reporting company. For 1-4 rentals, the CBRs of the owners are sufficient.
- d. Discussion of Credit Report Content with Applicants. You can discuss CBR items which are not of public record, provided you do so in a responsible manner. However, your discussion should only address those derogatory items and other accounts to the degree necessary to process the application. You must record all discussions in detail on the chron sheet. ANY REQUEST FOR A COPY OF THE CREDIT REPORT FROM SBA MUST BE IN WRITING AND BE REFERRED TO COUNSEL FOR ACTION.

- e. Poor Credit History. You must give applicants with poor credit history every opportunity to provide explanations before you reach a conclusion about their overall credit worthiness. Generally, a history that consists of minor, isolated instances of poor credit or late payments is acceptable provided that:
 - (1) The applicant explains the lapse; and
 - (2) The applicant has other accounts with "as agreed" payment records. **AN APPLICANT'S POOR CREDIT HISTORY CANNOT BE OVERCOME BY THE CREDIT HISTORY OF A GUARANTOR.**
- f. Lack of Credit History. You must explore and identify the reasons for a lack of credit history when making credit judgments. You can't simply judge applicants without credit cards, charge accounts, or other forms of electronic credit histories to have satisfactory or unsatisfactory credit. However, if an applicant can demonstrate (preferably over a minimum period of 2 years) their ability to make regular, noncredit payments (e.g., utilities, rent, insurance, medical or dental bills, etc.) in an as agreed manner, you can make a determination of satisfactory credit. You must justify these decisions in your LOR.
- g. Prior or Existing SBA Loan History. If the application indicates previous or existing SBA loan experience, or if you discover SBA financing through other sources (e.g., PMQD query), you must determine if the performance is or was satisfactory.

You don't need to call the servicing office if:

 - (1) The PMQD 09, 11, 26, and CABW 12 reflect no history of delinquency (delinquency being a payment more than 30 days past due), or returned (NSF) checks; and
 - (2) There have been no deferments; and
 - (3) The damaged or collateral property is not in a SFHA.
- h. Bankruptcy or Reorganization. Applicants (home or business) who have previously filed bankruptcy, or are currently in the process of reorganization are not automatically precluded from receiving assistance. The type of bankruptcy filing, when it occurred, the details of the reorganization plan, the plan's success or failure, and subsequent disposition are just some of the factors which bear on the overall evaluation.

- (1) Chapter 7 Bankruptcy (Liquidation). We do not automatically disqualify applicants discharged in prior Chapter 7 bankruptcies. The effect on the credit decision generally depends on the circumstances. The older the discharge, the less effect it may have on the credit decision. You can recommend approval for applicants discharged in bankruptcy within the last 2 years if you document the following in your LOR:
 - (a) The bankruptcy was caused by circumstances beyond the applicant's control (e.g., unemployment, prolonged illness, medical bills not covered by insurance, protracted labor strikes, etc.) as opposed to bankruptcy caused by the applicant's actions (e.g., misconduct, avoidance of creditors, careless overextension of debt, etc.); and
 - (b) The applicant's credit history since the bankruptcy is satisfactory; and
 - (c) The applicant has repayment ability despite the circumstances surrounding the bankruptcy. Use caution in cases of self-employed applicants whose bankruptcy occurred during previous self-employment, or applicants whose current employment is not stable.
- (2) Chapter 13 Reorganization (Wage Earner's Plan).
 - (a) A Wage Earner's Plan (WEP) applies to individuals and indicates some effort to pay certain creditors. A WEP can make it possible to settle debts for only a portion of what is owed, while retaining personal assets. The maximum term permitted for a WEP is 5 years and once approved, the wage earner can incur additional debt only with permission from the court. Generally, the court will not approve additional credit unless the purpose is vital to the well being of the wage earner or family members.
 - (b) You can recommend approval if:
 - (i) The applicant has made all payments on the WEP in a satisfactory manner, and
 - (ii) Total debt service is reasonable; and
 - (iii) The trustee gives written approval for the proposed loan.

- (3) Business Reorganization (Chapter 11). Businesses may be in one of many different stages of the Chapter 11 filing procedure. This can impact our ability to approve, or even process the application. Therefore, you must discuss these cases with disaster counsel before you begin and follow their advice for any legal impact to the validity of the plan. You should discuss:
- (a) Whether a plan was filed with the Bankruptcy Court;
 - (b) If the Court accepted the plan;
 - (c) Whether the business is following the plan;
 - (d) How much time remains before the business will emerge from the plan; and
 - (e) If the Court will consider allowing the applicant to incur additional debt outside of the plan.
- i. Prior SBA Loan Discharged in Bankruptcy. Applicants who had a prior SBA loan discharged in bankruptcy are not automatically barred from receiving disaster loan assistance.
- j. Delinquency on Federal Obligations. "Federal obligations" include, but are not limited to: any direct Federal loans, contracts, and/or grants; student loans; and debts owed to the IRS, etc. Generally, we will not approve loans to applicants who are delinquent on any Federal debt, or have a judgment lien against their property, unless one of the following applies.
- (1) If a Federal obligation is delinquent, but no judgment lien has been filed, we can approve a loan only if the Federal agency involved provides evidence that the debt is no longer delinquent and there is reasonable assurance that the applicant will comply with the terms of the loan agreement.
 - (2) If a Federal obligation is delinquent and a judgment lien has been filed, we can approve a loan only under the following circumstances.
 - (a) When the delinquency on a debt resulting in a lien is caused by the disaster itself, we have the authority to waive the restriction. This applies whether the debt pre-existed the disaster, or was the result

of the disaster. Because we do not provide funds to pay another Federal creditor, you must make workout arrangements in conjunction with any approval recommendation.

- (b) A debtor who has a judgment lien and made arrangements before the disaster to satisfy the debt, and whose adherence to those arrangements before the disaster was satisfactory is eligible. We must obtain concurrence from the creditor agency that the pre-disaster agreement was being satisfactorily honored.

The AAD/LP or higher must approve these exceptions or waivers.

- k. Lawsuits and Judgments. You must obtain complete details of any pending lawsuits or unsatisfied judgments. If these are more than \$1,000 in the aggregate, you must submit the information to disaster counsel for an opinion regarding the existing or potential impact to approval.

77. CONSUMER CREDIT PROTECTION ACT (REGULATION Z)

- a. Whenever we decline a loan in whole or in part because of information contained in a credit report, our decline letter must also include the name and address of the credit reporting agency.
- b. Whenever we decline a loan in whole or in part because of information obtained from other than a credit reporting agency, our decline letter must advise the applicant they may submit a written request for disclosure of the nature, not the source, of the information upon which we based the decline action. They must do this within 60 days of notification.
 - (1) This applies if the decline concerned the applicant's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.
 - (2) While the law does not require disclosure to an applicant of the SOURCE of the information received in a direct inquiry, the intent of the law is that we MUST give the applicant enough facts to be able to refute or challenge the accuracy of the information.

78. USE OF APPLICANT'S AND/OR OWNER'S ASSETS AND CREDIT

- a. We do not require the use of the applicant's or owner's assets and credit if a physical loan (including refinancing) does not exceed:

¶78

- (1) The administrative limits for a home loan; or
 - (2) The legislative limit for the combined total of all loans to a business applicant and its affiliates.
- b. We may require the use of the applicant's or owner's assets and credit if the loan:
- (1) Is an EIDL; or
 - (2) Is for more than \$1,500,000 (MSE).

79. COMBINATION LOANS

Because the terms applicable to disaster home and business loans vary, we must process them separately. However, the same LO should process companion files when possible.

- a. We must make separate loans to:
- (1) An applicant who suffers damage to both primary home and a sole proprietorship business;
 - (2) An applicant who suffers damage to both primary home and residential and/or small commercial rental properties;
 - (3) Business loan applicants who file for both physical damage and economic injury; and
 - (4) Affiliates of business loan applicants who file for physical damage and/or economic injury.
- b. Exception to the Rule. We can combine applications from business entities with identical ownership into a single application. (see subparagraph 82.c.)
- c. Abbreviated Processing Procedure for Business/EIDL Companions. If you are processing a physical business loan and a decline becomes apparent for credit-related reasons, you do not have to fully process the companion EIDL. In these cases, the decline letter for the physical loan must state: "Due to the nature of this decline we have not fully analyzed your economic injury disaster loan request. Should you seek reconsideration, we will then determine your eligibility for economic injury disaster loan assistance."

80. TYPES OF LOAN OFFICER'S REPORTS (LOR)

- a. Use SBA Form 140, "Loan Officer's Report - Disaster Home Loan," for all home loan applications. Also use SBA 140 for all sole proprietor businesses with 1-4 rental units for Physical and EIDL applications.
- b. Use SBA Form 1616, "Loan Officer's Report on Business Disaster Loans," for all other physical business applications and all EIDLs, except sole proprietor businesses with 1-4 rental units. Reports must be as brief and concise as possible and still contain all pertinent information.
- c. LOs and reviewing/approving officials must:
 - (a) Complete LORs in ink (blue or black only);
 - (b) Print their name in addition to their signature on all LORs;
 - (c) Legibly write, sign and date all handwritten memos and notations contained in a loan case file (including those affixed to the LOR); and
 - (d) Initial and date all changes.
- d. You are authorized to use photocopied LORs for business and EIDL companion files only. If you use a photocopy, each LOR must:
 - (a) Have a separate first page with original recommendations and signatures; and
 - (b) Include a discussion of the physical and EIDL recommendations.

81. TELEPHONE CONTACT UPON COMPLETION OF PROCESSING

After completing the analysis you must inform the applicant of the possible action. Advise them that NO decision is final until they receive it in writing. If you can't reach them by phone, seek supervisory guidance before submitting the file for review. You are authorized to discuss the proposed terms or reasons for the proposed action only with the individuals named on the application, or their named representatives. Under no circumstances are you permitted to leave this information on an answering machine or with any unauthorized third party.

a. Approval Recommendation.

- (1) You must inform the applicant of all proposed terms and conditions.
 - (a) Terms include the loan amount, interest rate, installment payment, loan maturity, initial due date and collateral.
 - (b) Conditions include, at a minimum: use of proceeds, insurance requirements/assignments, loan closing deadline, disbursement period, etc.
- (2) You must also ask whether the applicant has any questions. This practice avoids applicant confusion and maintains Agency credibility. Exercise care when responding to questions concerning areas you aren't completely familiar with. In these cases, tell the applicant you will seek supervisory guidance and promptly call them back.
- (3) If an approval recommendation is contingent upon a "conditional commitment letter" (CCL), you must inform the applicant of required documentation. Also, advise the applicant that a telephone call regarding this process will follow, if the loan is approved. See paragraph 87 and subparagraph 89.b., for procedures.

b. Decline recommendation. You must inform the applicant of the reason(s) for the proposed decline action and advise them of their right to request reconsideration.

c. Withdrawal recommendation. You must inform the applicant of the reasons for the proposed withdrawal action and advise them of their right to request reacceptance.

82. WITHDRAWAL OF APPLICATIONS. Withdrawing an application, either at the applicant's request or by SBA does not constitute a processing decision. However, the rules relating to reacceptance requests apply. (see chapter 9.)

- a. At applicant's request. We can withdraw an application at any time during processing if we receive a written or oral request. When an applicant orally requests to withdraw the application during processing, you must note the conversation on the chron log. You should encourage the applicant to submit a written statement to SBA, however we won't hold the application in Loan Processing pending its receipt. Our withdrawal letter must reference the date of the conversation or written request.

- b. By SBA. We must withdraw applications which we can't process to a decision because of a lack of (or incomplete) response to a 14-day letter. Our withdrawal letter must specify what information is needed and also state the reacceptance deadline.
- c. File consolidation. You must discuss the option of file consolidation if:
 - (1) An applicant owns 100 percent of two or more businesses which were damaged by the disaster; and
 - (2) Completes a separate application for each business.

Upon the applicant's agreement, you may combine the applications into one case file and withdraw the other(s).

- d. Appendix 3 lists the coded reasons for withdrawal.

83. DECLINE OF APPLICATIONS. If you recommend decline, you must address ALL decline reasons and you must indicate each applicable code in the recommendation section. Our decline letter will contain and define each of the decline reasons, and must advise the applicant of their reconsideration rights. (see chapter 9 and appendix 4.)

APDs are the only exception to the requirement of listing all the reasons for a decline action as described in subparagraph 69.i.

84. DOCUMENTING REPAYMENT ABILITY. Cash flow, not collateral, is the basis for establishing repayment ability. We must have reasonable assurance of an applicant's ability to repay any proposed loan. For home loans, we determine this by the FDM described in appendix 26. For business loans, we determine this by the results of the financial analysis performed on the business.

85. LIMITED REPAYMENT ABILITY/LOSS IN EXCESS OF LENDING LIMITS. Your LOR must always explain how applicants who lack the ability to repay the full amount of disaster loan eligibility, or applicants with losses in excess of the lending limits will effect viable restoration. In some instances, a disaster victim's recovery could involve SBA, FEMA, the State grant, and the ARC or some other organization, such as Mennonite Disaster Service.

¶85

- a. When applicants sustain uninsured losses in excess of our lending limits, you must determine if the applicant can complete restoration with the SBA loan, and any other Federal, State, or local programs. If they can't, you must determine if:
 - (1) The amount needed to supplement the SBA loan is available to the applicant on reasonable terms; and
 - (2) The applicant can repay all obligations from present and future income.
- b. Under a Presidential declaration, joint assistance involving other relief agencies may be necessary to restore homeowner disaster victims with the ability to repay only part of the verified damages. You should attempt to establish some plan whereby SBA alone, or in conjunction with other disaster relief organizations, can restore all or part of the real estate and the IFG program can be used to complete and/or adequately furnish the residence to make it livable.
- c. Under an SBA declaration, joint assistance with the ARC or other relief agencies may be possible.
- d. If a substantial shortfall exists, you must consult with LV to determine if a lesser loan amount will permit the victim to restore reasonable habitability.

86. LEGAL NAME OF A BUSINESS LOAN APPLICANT. For each business or EIDL application which involves a legal entity (other than a sole proprietorship) as an applicant or guarantor, Loan Processing will be responsible for contacting the appropriate State Secretary of State to establish the correct legal name of the entity and whether the entity is in good standing with the State and placing documentation of this information in the case file. A chron entry or a separate form may be used and this documentation will eliminate the need to obtain a Certificate of Good Standing.

87. LOAN AUTHORIZATION AND AGREEMENT (LAA)

- a. We issue all SBA disaster loan commitments in the form of a written LAA using SBA Form 1391. A disaster loan borrower agrees to the various terms and conditions of the loan by signing this written LAA. The general form has six variations: unsecured home, business, and EIDL; and secured home, business, and EIDL.
- b. We consider the draft LAA you prepare to be part of the LOR, and it becomes the basis for the preparation of loan approval documents and for the closing and disbursement process. Counsel reviews all draft LAAs for secured loans for sufficiency of collateral instruments and other legal concerns. A recommendation to approve a loan is not final until the SLO approves the LOR, the draft LAA, and, if needed, the CCL draft, and counsel approves the (secured) draft LAA and CCL. Generally, counsel doesn't review unsecured draft LAAs.

.87

- c. The LAA contains all terms and conditions applicable to the loan. You must not impose conditions other than as written in the LAA. Borrowers are not legally bound by any verbal term or condition.
- d. In preparing a draft LAA, you must check all available standard and optional conditions before drafting any custom conditions. You only use custom conditions when no standard or optional condition will suffice.
- e. Custom conditions must follow the "Borrower will" format used in all standard and optional text. Counsel must review them during the legal review of the draft for clarity, legal sufficiency, and conformance with format standards.

NOTE: If any custom condition is used more than 10 times a year (nationally, not per Area Office), it must be:

- (1) Submitted to ODA through area counsel for adoption as a standard or optional condition; and
- (2) Cleared in accordance with statutory requirements.
- f. The individual making any correction on a draft LAA must initial and date the correction. Both you and the SLO, or other approving official, must initial and date any substantive changes.
- g. The draft LAA is permanently maintained in the loan case file.
- h. If the SLO concurs with the draft LAA, they must sign in the space provided on the draft. The SLO is responsible for assuring that all conditions are consistent with the LOR, and for avoiding nonessential use of custom or customized conditions.

88. CONDITIONAL COMMITMENT LETTER (CCL)

- a. You must prepare a draft CCL in cases where we did not require specific items at the time of application but need them to either confirm eligibility or facilitate the preparation of loan closing documents (LCDs). Submit the draft CCL with the LOR and draft LAA. Appendix 5 provides a detailed list of the standard items commonly needed for this purpose.
- b. Renters with only personal property damage are not required to submit evidence of occupancy with their home loan applications. Such evidence will not be required after approval if:

.88

- 1) The address and social security numbers contained on the FTRs and the Credit Bureau report are the same as on the application; or
 - 2) In conversations with the applicant any apparent discrepancy is resolved to your satisfaction. The LOR and the chron record should contain an explanation of the resolution.
- c. Deeds generally establish real estate eligibility; however, in the case of an unsecured loan you must use one of the following in their listed order to verify real estate eligibility when legal ownership documents are not already in the case file.
- 1) FEMA Report (Ownership verification).
 - 2) CDB-Infotek or similar reliable service.
 - 3) One of the following documents: Title (Manufactured Home); Official Record – Deed, Recorded land installment contract, will, court records; Affidavit from county official; Property tax records; Insurance policy forms; Contacting the mortgage company.

89. LOAN APPROVAL (FUNDING)

We document loan approval (funding) by entry into the loan accounting system. This action obligates funds for the approved loan. No loan is officially approved from a legal or work measurement perspective until loan funding is complete. When the accounting system establishes the loan account and obligates the funds for the loan, we get confirmation in the form of a loan number. Loan numbers are unique to each loan and remain permanently assigned to the file. They are ten digits and contain a prefix for added identification. The prefix to the ten digit loan number is DLH for disaster home loans, DLB for disaster business loans, and EIDL for economic injury disaster loans.

- a. Post Funding Procedure. After completion of loan funding:
 - (1) If the file doesn't have a draft CCL, we forward it to the legal department for preparation of the loan approval documents; and
 - (2) If the file has a draft CCL, we forward it to a subdepartment of Loan Processing (Department 39).
- b. Commitments Outstanding (Department 39). When a file arrives in Department 39, a Loan Officer (LO) must:

.89

- (1) Telephone the borrower;
- (2) Reiterate the terms and conditions of their loan;
- (3) Explain that we need additional documentation before we can prepare their loan closing documents;
- (4) Specifically describe the required documents;
- (5) Inform the borrower of the 21-day deadline; and
- (6) Promptly mail the CCL and place a copy in the case file.

To expedite the process, you may encourage prospective borrowers to fax the needed documents to SBA. However, when offering to accept faxed documentation, you should be careful to display a helpful attitude rather than risk appearing demanding and overbearing.

- c. There are three possible outcomes from the commitments outstanding stage, and each requires a different course of action.
 - (1) If we receive the required documents, the case is logged out of Department 39 following legal review and forwarded to approval documents.
 - (2) If we receive documents which are incomplete, different from those specified, or raise eligibility or credit concerns, Department 39 must attempt to resolve the differences. This includes doing a loan modification if appropriate.
 - (3) If we don't receive the documents by the deadline (including any grace period established by the area office), the case is logged out of Department 39 and into loan modification for possible cancellation.

90. NOTIFICATION TO BORROWER OF LOAN APPROVAL

We must notify the applicant in writing within 3 days of completion of loan funding.

- a. As a general rule, we mail all approval and closing documents together. This includes the approval notification letter, the LAA, promissory Note, any security instruments, all other closing documents, and closing instructions.

¶90

- b. Exceptions Should be Rare. When workloads require departure from the general rule, we will send an approval notification letter promptly after loan funding. The letter should explain that we will prepare and mail loan closing documents within a few days.
- c. The letter must inform the borrower that they must properly complete and return all closing documents to us within 2 months of the date of the LAA.
- d. All loan closing packages must include instructions on how to complete and return the documents, and how to obtain our assistance in closing the loan.
- e. The following statement must be included in all disaster business loan approval letters: In addition to disaster loan assistance, the SBA offers business management and technical assistance services through our resource partners, the Small Business Development Center (SBDC). The SBDC provides free consultation and low cost training programs in areas such as developing a business plan, financial planning and marketing plans. SBDCs can also assist small businesses in developing information necessary for loan applications. For more information on these services, please contact your local SBA District Office for the location of the SBDC in your area.

91. RESERVED

CHAPTER 8

DISASTER LOAN CLOSING AND DISBURSEMENT92. RESPONSIBILITY FOR CLOSING LOANS

Loans are closed in accordance with area counsel's guidelines and supervision.

93. OBTAINING LOAN FUNDS

- a. Once we approve a disaster loan, the borrower may obtain loan funds upon compliance with the conditions of the LAA. All named borrowers must sign and date the LAA.
- b. Limitation on Time for Return of Closing Documents (LCDs). LAAs include a provision limiting the time available to borrowers to return all closing documents. Borrowers must complete and return all closing documents to SBA within 60 calendar days of the date of the LAA.
 - (1) If the borrower doesn't return the LCDs within 30 days, the Legal Department must mail a reminder notice emphasizing the approaching deadline. (A phone call may also be appropriate.)
 - (2) Area counsel or designee may approve an extension of the deadline only if the loan file contains adequate documentation to justify the extension.
 - (3) If we don't receive the LCDs within 10 days after the 60 day deadline or any extension, we cancel the loan. We must send a letter specifying the reasons for the cancellation.
 - (4) Reinstatement of a canceled LAA is subject to the provisions of paragraph 110.

94. DISBURSEMENT PERIOD

- a. Standard Disbursement Period. All LAAs contain a standard paragraph requiring the borrower to arrange for, and obtain all loan funds within 12 months from the date of the LAA. The AD may, on a disaster by disaster basis, reduce the standard time frame to 6 months.

¶94

- b. Extension of Disbursement Period. You can extend the original 12 month (or in some cases the original 6 month) disbursement period upon receipt of a written request from the borrower justifying the need for the extension.
- c. Authority for Extension. Only officials with delegated authority may approve extensions. Extensions must be documented by a loan modification on SBA Form 1913 or SBA Form 1532.
 - (1) SLOs may approve extensions of the original 6 or 12-month disbursement period for periods up to 6 months at a time, without cumulative limitation, provided the loan is partially disbursed.
 - (2) The AAD/LP level or higher must approve extensions of the 6 or 12-month disbursement period on undisbursed loans.
 - (3) An extension must be approved by an official at the same or higher level than the official who approved the loan.

95. EVIDENCE REQUIRED BEFORE DISBURSEMENT

The area office orders all disbursements. They are sent directly from the Treasury Department to the borrower unless there is a compelling need for the disaster office to issue the check. Order co-payable checks when appropriate.

- a. All Loans. We cannot request a disbursement until the following conditions are satisfied.
 - (1) The loan closer must review the file to determine if the Note and other documents are properly prepared and all necessary conditions satisfied. Copies of the Note must be marked "Duplicate" in red ink prior to execution by the borrower. Typing errors, erasures, or corrections on the Note are not acceptable.
 - (2) The borrower must initial any corrections made on the documents other than the Note. The documents must be signed exactly as the names appear on them. Corporations must affix their seal on all copies of the Note and other documents as required by State law.
 - (3) The borrower must show identification when a check is personally delivered by a disaster office employee. Preferably, the identification will include a drivers license or other document containing both picture and signature.

- (4) You must update the DOB check.

b. Secured Loans.

- (1) We may disburse the first \$10,000 (or \$5,000 for EIDLs) upon receipt of the documents required for an unsecured loan. We may disburse amounts larger than \$10,000 (or \$5,000 if EIDL) when the appropriate security instruments and other closing documents have been properly completed. For loans requiring insurance, the borrower must submit evidence of insurance coverage as required by the LAA.
- (2) We require a title or record search for loans more than \$25,000 unless the LO justifies the requirement for loans of \$25,000 or less. These exceptions should be rare.
- (3) Generally, secured loans are disbursed in stages that correspond with the borrower's needs and how they spent prior disbursements. We can make full, single disbursement of secured loans only when:
 - (a) The borrower has spent the equivalent amount of funds (excluding required prior injections) and satisfied the use of proceeds requirement; or
 - (b) Where counsel has assurance that the borrower will use the full disbursement as authorized (for example, a joint-payee check).
- (4) If the LAA didn't require private interim financing, we can, if necessary, make disbursements for completed work, labor used, or materials provided before project completion if we have evidence of proper use of loan proceeds.

c. Requirements for Subsequent Disbursements.

- (1) Prior to any subsequent disbursement the borrower must complete and submit SBA Form 1366, "Borrower's Progress Certification." We must review the 1366 and necessary receipts to ensure proper use of proceeds before authorizing further disbursement. Counsel should request progress inspections from Loss Verification when appropriate. We may also require lien waivers in the total amount of all labor and materials used on the R/E repair/construction from all contractors, subcontractors, and independent workers involved. Borrowers must support disbursements for equipment, furniture, inventory, etc., by paid invoices.

- (2) If the borrower requests an advance payment to purchase larger items of M&E, we can disburse against a firm quotation or invoice using a co-payable check.
- (3) We must take reasonable precautions before making the final disbursement on a major construction project to ensure that the project was satisfactorily completed. Examples include receipt audits, conversations with contractors, on-site progress inspections, and in some cases, affidavits from borrowers and/or contractors. Counsel will obtain and follow guidance from LV throughout the disbursement period whenever major reconstruction is involved and use co-payable checks where possible and appropriate.
- (4) Check the status of the loan and DOB reports before making any subsequent disbursement. We can't authorize any disbursement unless the loan is current.

96. DISBURSEMENT AMOUNTS

Base disbursement amounts on the expressed or obvious needs of the borrower. Where the needs are not expressed, obvious from the facts of the case, or easily ascertained during loan closing, the following schedule should be followed.

- a. Unsecured Loans. Disburse fully upon the return of the Note, LAA, evidence of flood insurance where appropriate, and receipt of other necessary documents, such as insurance assignments, eligibility waivers, etc.
- b. Secured Physical Loans.
 - (1) Once collateral conditions are met, the initial disbursement may be up to \$25,000. We can make subsequent disbursements in amounts up to \$25,000 if the borrower submits an SBA 1366 covering at least 80 percent of the prior disbursements. We can increase the amount of the last disbursement by up to \$5,000 if not doing so would leave an undisbursed amount of less than \$5,000 (i.e., if the loan is for \$55,000 it can be disbursed in 2 installments of \$25,000 and \$30,000 respectively).
 - (2) When disbursing the R/E portion, maintain contact with the borrower as necessary to determine an appropriate disbursement schedule. In cases of do-it-yourself repairs, be sure the borrower's schedule is reasonable.

- c. Secured EIDLs are disbursed consistent with the guidance in the "Use of Proceeds" section of the LAA, once closing requirements are met.
- d. Credit Review of all loans will be required that have not been fully disbursed within 12 months from the date of the LA&A and annual reviews thereafter until the loan has been fully disbursed. The review will ensure that there have not been any adverse change in the borrower's financial condition that would impact their ability to repay the loan before we make further disbursements that may be at risk. At a minimum the credit review must consist of obtaining a new credit report (CBR's and D&B Reports), updated financial statements, and the appropriate IRS 8821's if the time for filing a new tax return has expired. If an adverse change does occur, we must take the appropriate measures in canceling the loan. This applies to undisbursed and partially disbursed loans.

97. ESCROW ACCOUNTS AND/OR CONTROLLED ACCOUNTS

Generally, we should not disburse loans through escrow or controlled accounts. Their use should be on an exception basis only, and must be justified in the LOR. However, we may use escrow accounts when necessary to conform to State law or requirements of title companies and similar organizations, particularly relating to construction loans, purchase of real estate (including a manufactured home), or when necessary to conform to local laws such as those relating to liquor licenses. In these cases a title company, borrower's attorney, or a bank may serve as the escrow agent. When we use a controlled account we must consider the length of time funds may remain in the account due to interest accrual.

98. RESERVED

99. RESERVED

CHAPTER 9

RECONSIDERATION, APPEAL, AND REACCEPTANCE100. RECONSIDERATION OF DECLINED LOAN APPLICATIONS

- a. General Policy. Declined applicants can present additional information which may overcome the reason(s) for the decline. Whenever the applicant requests a reconsideration of our previous lending decision, their case file must be assigned to a new loan officer for processing. This must be done in order to provide a fresh look at all the information in an effort to provide the applicant every opportunity to obtain loan approval.
- b. Method and Deadline for Requesting Reconsideration. Requests must be in writing and received by the office that declined the application within 6 months from the date of the initial decline letter. It is not necessary for the applicant to file a new application in these cases.
- c. Late Requests. We can't reconsider an application if more than 6 months have elapsed since the date of the initial decline. Generally, applicants must file a new application, however, the AAD/LP may permit updating of the existing application in some cases.
- d. Content of Request. The written reconsideration request must contain all significant new information (business loan applicants must include current business financial statements) which the applicant believes will overcome all the initial decline reasons. The SLOs can accept these requests if the applicant complied with the terms of the decline letter.
- e. Alternate Reasons for Decline Upon Reconsideration. The reason(s) specified by the disaster office in the initial decline letter do not constitute a waiver of SBA's right to decline an application upon reconsideration for other valid reasons. However, the letter should state all of the reasons for the initial decline.
- f. Only an official at the same or higher level as the official who took the final action to decline the original loan application has the authority to take final action on reconsidered applications.
- g. Summary Decline. A reconsideration of a summary decline is an original action because:

- (1) The applicant did not receive an application; or
 - (2) The application was not formally accepted (docketed).
- h. Reconsideration of Accelerated Processing Decline (APD). For reconsideration purposes, treat APDs like any other original decline action.

101. FURTHER RECONSIDERATION (APPEAL)

- a. General Policy. Applicants declined upon reconsideration can request further reconsideration at the next higher level. Whenever an applicant requests a further reconsideration of our previous lending decision, their case file must be assigned to a new loan officer for processing. This must be done in order to provide a fresh look at all the information in an effort to provide the applicant every opportunity to obtain loan approval.
- b. Method and Deadline for Requesting. Requests must be in writing and received by the office that processed the reconsideration within 30 days of the date of the decline letter.

NOTE: The APDs are subject to normal reconsideration procedures. However, an exception can apply. The APDs declined upon reconsideration receive the standard 30-day period to appeal at the next higher office. However, if the decline upon reconsideration contains any new reason (e.g., 21) not previously conveyed to the applicant in the APD decline letter, we will extend the time frame to a total of 90 days (the standard 30 days plus an additional 60 days).

- c. Content of Request. All requests must include the applicant's justification to reverse the prior decline action(s). If the applicant does not provide new information, you should contact the applicant to see if any is available. If the applicant cannot provide any new information, prepare an abbreviated LOR along with a memo supporting the previous analyses. If the applicant submits new information, you must prepare a detailed LOR.
- d. Finality of Review - Approvals. The AAD/LP has final approval authority. The AD does not have to sign approval recommendations unless there is a split.

- e. Finality of Review - Declines. The AD has final decline authority. The AD's decision is final unless:
- (1) The AD does not have authority to approve the loan or action; or
 - (2) The AD refers the matter to the AA/DA; or
 - (3) The AA/DA, upon a showing of special circumstances, requests the area office to forward the matter to the ODA for final consideration. Special circumstances include policy reconsideration or reevaluation by other elements of the Agency, alleged improper acts by SBA personnel or others, conflicting policy interpretations between two area offices, or other considerations.

102. SPECIAL PROVISIONS APPLICABLE TO RECONSIDERATION PROCESSING

- a. You must obtain updated DOB information on all requests for reconsideration of home loan applications. This enables you to determine if the proposed loan duplicates assistance from other agencies. The FEMA is the point of contact for DOB information in Presidential disaster declarations.
- b. Under an SBA declaration, if ARC or any other assistance program was active, you must contact those agencies to determine if assistance was awarded.

103. RECONSIDERATION OF DECLINED LOAN MODIFICATION REQUESTS

These requests are subject to the same policies and procedures governing declined disaster loan applications.

104. RECONSIDERATION OF REFUSAL TO CLASSIFY APPLICANT AS MAJOR SOURCE OF EMPLOYMENT (MSE)

If an applicant disagrees with our MSE determination, the procedures are as follows.

- a. The applicant must provide written support for its contention that it meets one of the three employment criteria in paragraph 42.a.
- b. The AAD/LP will reconsider the prior determination in light of the applicant's statements, document the recommendation and forward the package to the AD.

¶104

- c. The AD must:
 - (1) Take final action on recommendations for refusal to classify an applicant as an MSE; or
 - (2) Forward the file to the AA/DA for MSE status (or if there are extenuating circumstances).

105. RECONSIDERATION OF DECLINE FOR EXCEEDING APPLICABLE SIZE STANDARDS

Size standards apply to eligibility of EIDL applicants only. Applications initially declined for size are subject to different reconsideration procedures.

- a. Initial size decline actions are taken at the SLO level.
- b. Following an initial size decline the applicant may request a formal size determination by the area office. The applicant must submit an SBA Form 355, "Application for Small Business Size Determination," with the request. There is no time limitation for making a formal size determination for purposes of financial assistance [13CFR 121.303(e)].
- c. Formal size decline actions are taken at the AAD/LP level.
- d. Following a formal decline for size the applicant may petition the Office of Hearings and Appeals (OHA) in Washington, D.C. The appeal petition must be served and filed within 30 days after the size determination [13CFR 134.304(a)(2)].
- e. Size determinations don't count as "actions" for purposes of the reconsideration and appeal process.

106. REACCEPTANCE OF WITHDRAWN APPLICATIONS

- a. General Policy. Applicants can request reacceptance of withdrawn applications.
- b. Types of Withdrawal Actions. Withdrawal actions result from:
 - (1) SBA action (including file consolidation); or

¶106

- (2) Applicant's request.
- c. Method and Deadline for Requesting. Requests must be in writing and received within 6 months from the date of the withdrawal.
- d. Content of Request. When applicable, the applicant must provide all information specified in our withdrawal letter. When we initiate the withdrawal, the applicant must also show that:
 - (1) Our action was in error; or
 - (2) The withdrawal resulted from causes beyond the applicant's control.
- e. Late Requests. We can't reaccept an application if more than 6 months have elapsed since the date of the withdrawal. However, we may grant permission to file a late application. If we authorize late filing, a new application is not always necessary. You must obtain current financial and credit information before processing the application (see subparagraph 100.c.).
- f. Special Provisions Applicable to Reaccepted Applications.
 - (1) We don't reaccept applications without reasonable assurance we can make a loan decision with the new information. This avoids withdrawing an application a second time.
 - (2) Applications that lack essential information after reacceptance may again be withdrawn. When a subsequent withdrawal occurs, the applicant's deadline is the greater of the original deadline or 30 days from the date of the subsequent withdrawal.

107. RESERVED

¶107

CHAPTER 10

LOAN SERVICING, CANCELLATION, REINSTATEMENT,
AND LOAN MODIFICATION

108. DISASTER LOAN SERVICING RESPONSIBILITY

The disaster office is responsible for necessary servicing actions until the loan is transmitted to the appropriate servicing office. These include, but are not limited to:

- a. Monitoring disaster loan installment payments and reviewing delinquency reports;
- b. Contacting past due borrowers by telephone, issuing the appropriate collection notice, and encouraging prompt payment; and
- c. Deferring payments and reamortizing loans.

109. CANCELLATION

- a. At Request of Borrower. When we receive a written or oral request, we may cancel all or any portion of an approved loan. Be careful before acting on an oral request to ensure cancellation is appropriate.
- b. Actions by SBA. We must initiate action to cancel all or any portion of an approved loan if:
 - (1) The borrower fails to complete and return all LCDs by the deadline; or
 - (2) The borrower does not satisfy all terms and conditions of the LAA; or
 - (3) A substantial adverse change in the borrower's financial or other condition occurs; or
 - (4) The borrower does not qualify for full disbursement during the original disbursement period; or
 - (5) The borrower does not request or receive approval for extension.

- c. Notification Procedure. Before we initiate an action to cancel all or any funds, we must mail a letter giving 14 calendar days notice of the pending cancellation. The letter must specify the action the borrower can take to prevent the cancellation.
- d. Documentation. You must document all cancellations using SBA 1913.

110. REINSTATEMENT OF CANCELLED LOAN

Borrowers may request reinstatement of all or any portion of a cancelled loan. We cannot reinstate any portion of a partially cancelled loan unless the borrower is current in all respects and maintains a satisfactory payment history.

- a. Method and Deadline for Requesting Reinstatement. All requests for reinstatement must:
 - (1) Be in writing and be made within 6 months of the date of the cancellation; and
 - (2) Show that our cancellation action was in error; or
 - (3) Provide justification that we should reinstate the funds.
- b. Late Reinstatement Requests-General Policy. We will not reinstate funds if:
 - (1) Six months have elapsed from the date of the cancellation or reduction action, or
 - (2) There is NO outstanding balance (the loan was cancelled in full or the disbursed balance has been paid off).

NOTE: The borrower may cite their reasons for the delay as the basis for late filing of a new application.

- c. Late Reinstatement Requests-Exceptions to General Policy. We may reinstate funds if:
 - (1) We cancelled undisbursed funds because the borrower could not qualify for full disbursement due to reasons beyond its control; and
 - (2) The borrower has an outstanding loan balance and a satisfactory payment history; and

- (3) The borrower submits a request within 6 months of overcoming the reasons for the delay; and
- (4) The borrower provides all outstanding requirements.

111. LOAN MODIFICATION

- a. Amendments and Modifications to Loan Authorizations. You must make any necessary amendment(s) or modification(s) to any term or condition of a LAA on the appropriate loan modification form.
- b. Authority to Approve Loan Modifications. With the exception of correcting typographical errors and similar minor modifications, only an official at the same or a higher level as the official who took final action on the original LOR has the authority to approve requests for amendments or modifications. (See .8 b. for General Limits on Loan Approval Authority.)
- c. Authority to Decline Loan Modifications.
 - (1) For loans originally approved by a SLO, any official with delegated authority may decline a loan modification request.
 - (2) For loans originally approved by the AAD/LP, AD, or ODA, the AAD/LP must take final action to decline any loan modification request.

112. INCREASES IN PHYSICAL LOANS

Generally, a borrower can request an increase in a disaster loan within 2 years after the loan was approved. The AA/DA can waive the 2-year limit because of extraordinary circumstances.

- a. The increase must be requested and used to cover eligible damages resulting from events that occurred after the loan was approved and beyond the borrower's control. This includes:
 - (1) Accelerated costs;
 - (2) Hidden damage; and/or

.112

(3) Post-Approval Building Code Requirements. (Additional building code requirements not known to be in effect when the loan was approved; or building code requirements passed by the appropriate authority after the loan was approved.)

NOTE: We can accept these requests even if the filing period has expired.

b. Processing Requests for Increases.

- (1) Increases are handled by processing and are subject to reasonable requests for financial statements and other processing data. If an increase puts the loan into the secured category, you must amend the LAA to require collateral and other necessary conditions.
- (2) The same or a higher level of authority as the person approving the original loan must approve the increase.

113. RESERVED

CHAPTER 11

ECONOMIC INJURY DISASTER LOANS:
POLICIES AND ELIGIBILITY

114. AUTHORITY FOR ECONOMIC INJURY DISASTER LOANS (EIDLs)

Section 7(b)(2) of the Small Business Act (PL 85-536, as amended) authorizes SBA to make working capital loans to eligible small business concerns and small agricultural cooperatives which:

- a. Are located within the declared disaster area; and
- b. Have suffered, or are likely to suffer, substantial economic injury as a result of the disaster; and
- c. Do not have credit available elsewhere.

NOTE: A small business need not suffer any physical damage to be eligible for EIDL assistance.

115. LEGISLATIVE LIMIT ON ECONOMIC INJURY LOAN AMOUNT

The legislative limit of \$1,500,000 on disaster business loans applies to EIDLs. The limit applies to the total of all direct physical and economic injury disaster loans approved to any one borrower and its affiliates for any one disaster. See subparagraphs 41.b. and 41.c. for exceptions.

116. DEFINITIONS

For purposes of establishing EIDL eligibility, the following definitions apply.

- a. Small means any business concern or agricultural cooperative meeting the applicable size standard for its industry. See appendix 21.

- b. Business concern or concern means any business entity organized for profit, with a place of business located in the United States which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor. The business entity may be in the form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust, or a cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture. Generally, concerns eligible for EIDLs must conform to SBA's 7(a) program requirements.
- c. Agricultural cooperative means those cooperatives acting pursuant to the provisions of the Agricultural Marketing Act [12 U.S.C. 114(j)]. These associations operate for the mutual benefit of the members (producers or purchasers) and conform to (1) or (2) and, in all cases, (3) below:
 - (1) No member of the association is allowed more than one vote because of the amount of stock or membership capital they may own therein;
 - (2) The association does not pay dividends on stock or membership capital in excess of 8 percent per annum; and
 - (3) The association does not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of the business transacted with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by the association.

117. BASIC ELIGIBILITY DETERMINATIONS

You must make three basic eligibility determinations on all EIDL applications.

- a. Location. Section 7(b)(2) of the Small Business Act requires that all EIDL applicants be located in a declared disaster area. This includes all counties covered in the declaration. There must be a physical presence in the disaster-affected area for a business to be eligible. An applicant's economic presence alone in the affected area(s) does not meet this location requirement, nor does it meet the intent of the regulation. The applicant must demonstrate a physical presence. The physical presence must relate to the claimed economic injury and should be

tangible and significant. Merely having a P.O. Box in the disaster area would not qualify as a physical presence.

b. Business Activity. Business activity refers to the nature of the activity conducted by the applicant business entity applying for EIDL assistance.

(1) Main Activity. If the entity applying for assistance conducts more than one distinct business venture, you must first identify the main activity (which is generally the activity producing the most revenue). The main activity must be an otherwise eligible activity (even if it is not the activity for which the loss is being claimed) for the applicant business to be eligible. In sole proprietorships, the owner is the legal entity, i.e., one person conducting more than one distinct business venture is one legal entity engaged in more than one activity.

(2) Loss Activity. Once you determine that the main activity is eligible, identify the activity for which the loss is being claimed (loss activity). Both the applicant's main activity and loss activity must be eligible. Agricultural enterprises are the most common ineligible activities conducted by sole proprietors. If this is the main activity, the proprietor is ineligible regardless of the nature of the activity claiming the loss. (For the specific policy concerning the eligibility of agricultural enterprises, see subparagraph 120 b. (5)).

c. Size. An applicant for an EIDL must be a small business concern. You can find guidance on size determinations in appendix 21 and in 13 CFR Part 121. EIDLs are subject to a two-part size test:

- (1) The affiliated group to which the applicant business belongs must meet the size standard for the primary activity of that group; and
- (2) The applicant business, excluding any affiliates, must meet the size standard for its main business activity.

118. INDEPENDENTLY OWNED AND OPERATED BUSINESS

Section 3(a) of the Small Business Act states: "For the purpose of this Act, a small business concern . . . shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation . . ." You decide these issues on a case by case basis.

a. Critical Factors. You must examine two critical factors to determine if a business is independently owned and operated.

- (1) The owner(s) must have a substantial business risk resulting from investing in facilities or equipment and by incurring significant expenses which must be paid regardless of whether the operation generates a profit. The owner must share the risk of both the profits and the losses.

For example, an individual participates as a crewmember on a fishing boat and does not have a significant investment in the boat or equipment. The crewmember works for a share of the catch, reduced by certain trip expenses (fuel, food, etc.), which are deducted from the catch before the split. If there is no catch, or the catch is insufficient to cover the expenses, the crewmember incurs no significant liability for trip expenses and is not obligated to make continuing payments on the boat or other fixed expenses. Because the crewmember does not have a substantial business risk and has no significant investment, only time is lost if the operation fails to generate sufficient income. Thus, this individual is not a small business concern and is not eligible for EIDL assistance.

- (2) The business operation must be free from significant control by other entities (e.g., the customers or businesses that pay for its services).

For example, under the Tax Code (26 USC 3508), qualified real estate agents are treated as self employed for Federal income tax purposes. However, in many cases, we cannot consider these individuals as small business concerns because their business activities are controlled by a real estate broker. Also, in many states, State law requires real estate agents to be affiliated with licensed real estate brokers who are required to supervise the agent's activities. This supervision implies that a real estate agent is not free from significant control by the broker who pays for the agent's services.

However, it is possible, considering all relevant circumstances, to find that the agent is an independently owned and operated business.

If the agent had a sizeable investment in facilities and equipment, and demonstrated significant other factors showing independence from control by the broker, they may be eligible. Possession of a broker's license in and of itself does not create eligibility. If the applicant is a franchise, refer to counsel for eligibility guidance.

- b. Effect of IRS Guidelines. Not all self employed persons or independent contractors for tax purposes rise to the level of "small business concern" as required for EIDL eligibility. Merely filing a Schedule C with the Federal Tax Return does not qualify the individual as an independently owned and operated business. We aren't bound by IRS guidelines for determining if an individual is an employee or an independent contractor. EIDL eligibility is contingent upon compliance with the business risk and freedom from control factors.

119. APPLICANTS GENERALLY ELIGIBLE

Generally, applicants eligible for regular SBA business loans [7(a)] are also eligible for EIDLs. However, owners of rental property (landlords) are eligible for EIDLs, although not for regular SBA business loans.

120. INELIGIBLE EIDL APPLICANTS

- a. The following applicants are not eligible for EIDL or 7(a) assistance.
- (1) Religious Organizations.
 - (2) Eleemosynary (Charitable) Organizations.
 - (3) Nonprofit Organizations.
 - (4) Consumer and Marketing Cooperatives. However, other cooperatives and small agricultural cooperatives meeting applicable size standards are eligible.
 - (5) Gambling Concerns. Concerns that derive more than one-third of their annual gross revenue from legal gambling activities.
 - (6) Casinos, Racetracks, Etc. Businesses whose purpose for being is gambling (such as casinos, racetracks, poker parlors, etc.) are not eligible for EIDL assistance regardless of their ability to meet the one-third criteria established for otherwise eligible concerns.
 - (7) Concerns Engaged in Illegal Activities.
 - (8) Lending or Investment Concerns.

¶120

- (9) Speculative Activities.
 - (10) Pawn Shops, when 50 percent or more of previous years income was derived from interest.
 - (11) Real Estate Developers. Establishments primarily engaged in subdividing real property into lots and developing it for resale on their own account.
 - (12) Multi-level Sales Distribution (Pyramid) Concerns.
 - (13) Loan Packagers who derive 30 percent or more of their annual volume from the preparation of applications seeking financial assistance from SBA.
 - (14) Concerns with Principals Incarcerated, on Parole or Probation. The concern remains ineligible if the parole or probation is lifted solely because it is an impediment to obtaining a loan. [See possible exceptions in subparagraph 74.c.(2)(d) and 74.c.(4)(d).]
 - (15) Government-Owned Entities, except for businesses owned or controlled by a Native American tribe
 - (16) Political or Lobbying Concerns
 - (17) Concerns Engaged in the Sale of Products or Services or Live Performances of a Prurient Sexual Nature.
- b. The following applicants are not eligible for EIDL assistance, however they may be eligible for 7(a) assistance.
- (1) Concerns Not Located in the Declared Disaster Area.
 - (2) Concerns Determined by SBA to have Credit Available Elsewhere.
 - (3) Concerns Involved in Change in Ownership Situations. Entities which had a substantial change of ownership (more than 50 percent) after the impending economic injury became apparent, and no contract of sale existed prior to that time are ineligible. (See possible exceptions in subparagraph 13.h.)
 - (4) Concerns Established Post-Disaster. If a small concern was established after an impending economic injury became apparent, the owner assumed the risk and did not incur economic injury.

- (5) Agricultural Enterprises. If the primary activity of the business (including its affiliates) is agricultural, as defined in Section 18(b)(1) of the Small Business Act, neither the business nor its affiliates are eligible for EIDL assistance even though the non-agricultural portion of an agricultural enterprise may be eligible for business disaster assistance. (See subparagraph 15.g.)
- (6) Feed Lot Operators. Feed lot operators are not eligible for EIDL assistance, regardless of the manner in which they operate (i.e., buying and selling the livestock at their own risk; feeding livestock owned by another and being compensated based upon weight gain; feeding livestock owned by another and being compensated on the basis of cost of feed plus space rent). A feed lot operator constitutes an "agricultural enterprise" as defined by the Small Business Act.

121. OTHER ELIGIBILITY MATTERS

a. Loggers.

- (1) In physical declarations, loggers are treated like any other business and their EIDL eligibility determined by the effect of the physical disaster on their business.
- (2) In Secretary of Agriculture designations (SecAgs), it should be rare to find loggers eligible for an EIDL. To establish basic eligibility in a SecAg, the applicant business must be dependent on the crop and the prosperity of the agricultural producer. In SecAgs that result from excessive rainfall, hail, flooding, etc., damage to trees, if any, is usually minimal. It would be a rare case where the logger could show that there was economic injury based on the effect of the loss of the timber "crop" on the landowner. The result is the same if the logger is to cut trees on private property (including tree farms) or on public property.

- b. Nurseries. The SBA regulations define nurseries as commercial establishments deriving 50 percent or more of their annual receipts from the production and sale of ornamental plants and other nursery products, including, but not limited to, bulbs, florist greens, foliage, flowers, flower and vegetable seeds, shrubbery, and sod. This type of business is a nursery farm and is an agricultural enterprise. For purposes of EIDL eligibility, nurseries deriving less than 50 percent of annual receipts from the production of nursery or other agricultural products are not agricultural enterprises.

- (1) In SecAgs specifically for drought, nursery farms, wholesale nurseries, and retail nurseries are all eligible for EIDL assistance, by statute.
- (2) In Presidential and Administrative declarations, nurseries (as defined by SBA) are not eligible for EIDL assistance because they are classified as agricultural enterprises. Wholesale and retail nurseries, that is nurseries that do not produce or propagate the majority of the merchandise which they sell, are eligible except for the portion of their business activity which deals with propagation.
- c. Changes in Market or Commodity Prices. Changes in market or commodity prices, for whatever reasons, do not constitute a basis to find eligible economic injury.

122. ELIGIBILITY UNDER SECRETARY OF AGRICULTURE DESIGNATIONS

- a. Eligibility Policy. To be eligible for an EIDL in connection with SecAgs, there must be a direct causal relationship between the effect of the disaster on agricultural producers and the claimed economic injury of the applicant.

Generally, this includes applicants that sell goods or services directly to agricultural producers where the loss is caused by the fact that the agricultural producers:

- (1) Are not buying because the product loss caused by the disaster has removed the need for the purchase; or
- (2) Are not buying because the product loss caused by the disaster has cut their income and/or cash flow to the point where they cannot pay for any additional purchases; or
- (3) Are not paying their creditors because the product loss caused by the disaster has adversely affected their ability to do so; or
- (4) Are not using ag-related services (e.g., grain elevators, transportation, custom harvesters, etc.), due to a lack of farm product caused by the disaster.

- b. Causal Effect on Wholesalers. There may be instances where, although the wholesaler (applicant) does not sell directly to agricultural enterprises, its business is obviously and directly affected by the agricultural product loss of the agricultural enterprise. For example, a wholesaler whose entire business consists of supplying retail dealers who in turn sell directly to the agricultural enterprises in the disaster-declared counties could suffer substantial economic injury with as much direct causal relationship as the retailers.
- c. Causal Effect in Agri-Dependent Communities. Economic injury can bear a direct causal relationship to the effect of a disaster on agricultural producers in connection with a retail or wholesale business which does not supply goods or services directly related to farm production, but which is located in an agri-dependent community. In these cases the effect of the loss by agricultural producers can possibly cause substantial economic injury to many of the businesses in that community that rely on patronage by, and as a result of, the agricultural producers.

For example, a restaurant, clothing store, hardware store, and similar types of "Main Street" businesses in an agricultural community, whose patrons are from that community, could be eligible if the effect of the agricultural product loss causes patrons to defer or forego purchasing the goods and services offered.
- d. Physical Effect of the Disaster. In SecAgs, businesses which are directly affected by the disaster event (e.g., hydro-electric plants, marinas, boat rentals affected by low water levels caused by a drought) are ineligible because their loss of income is not tied to the loss of income to the farmer.
- e. Summary. The more indirect the relationship between the applicant and the agricultural enterprise, and the more diversified the local economy, the more difficult it becomes to establish the effect of the disaster (on agricultural enterprises) as the cause of the applicant's claim of economic injury. However, we must consider each case individually and the direct causal relationship between the economic injury and the loss to agricultural producers caused by the disaster must exist.

CHAPTER 12

ECONOMIC INJURY DISASTER LOANS:
ANALYSIS AND PROCESSING

123. METHODS OF ANALYSIS

There are three different methods of EIDL analysis: Phase I, Phase II, and Phase III.

a. Phases I and II:

- (1) Apply to all physical declarations (Presidential and Administrative, or Agency); and
- (2) Do not require a needs analysis.

b. Phase III:

- (1) Applies to:
 - (a) SecAgs;
 - (b) Governor's Certifications [7(b)(2)(D)];
 - (c) Applicants in contiguous counties in Presidential declarations;
 - (d) Cases without physical damage to the applicant's business;
 - (e) EIDLs over \$1.0 million; and
 - (f) All MSE requests.
- (2) Requires a needs analysis.

124. DEFINITIONS

For the purpose of EIDL analysis, the following definitions apply.

- a. Needs are working capital requirements the business could have covered had the disaster not occurred, but cannot meet on its own or through other resources or recoveries until normal operations resume.

¶124

- b. Economic injury (EI) is a change in the financial condition of a small business concern or small agricultural cooperative attributable to the effect of a specific disaster, resulting in the inability of the concern to meet its obligations as they mature, or to pay ordinary and necessary operating expenses. Economic injury may be reduced working capital, increased expenses, cash shortage due to frozen inventory or receivables, accelerated debt, etc.
- c. Gross Margin (GM) is sales less Cost Of Goods Sold (COGS). Gross Margin Percent (GM%) is GM divided by sales.
- d. Modified Contribution Margin (MCM) is sales, less COGS, less obviously variable expenses. Modified Contribution Margin Percent (MCM%) is MCM divided by sales.
- e. Extraordinary items are needs which are outside of normal operations caused directly by the disaster.
- f. Transferability of EIDL Eligibility (For an existing business to be transferred to a new business). This policy applies in all cases when an EIDL applicant elects to discontinue the disaster impacted operation and immediately pursue another business venture. Both the existing and new entities must qualify as small businesses and be in compliance with (123.300, and (123.301 of 13CFR. As in all cases, you must fully document and justify the ability of the new company to repay any proposed disaster loan(s) taking into account all start-up costs, working capital requirements, and contingencies. The amount of EIDL eligibility in these cases is strictly based upon an analysis of the disaster impacted business. For Phase II and III processing, you must make a reasonable presumption of the return to normal operations for the existing business had it continued. The working capital requirements of the new business are not to be considered for determining EIDL eligibility. However, loan amounts must be limited to the working capital needs of the new business when it is obvious that the EIDL eligibility of the old business exceeded those needs.

125. PHASE I METHOD

Phase I assumes a business physically damaged has also sustained economic injury (EI) and provides immediate working capital to eligible applicants. Historically, 2 months of GM is generally sufficient to sustain the business until normal operations resume. The business must have been operating for at least 1 year prior to the disaster and apply for a physical loan. If the applicant requests more EI funds than we can authorize under Phase I, you must use the Phase II method.

- a. Processing Procedure. Use the trend analysis defined in appendix 20 to determine normal annual sales and normal GM for the last completed tax year. Make no adjustments to COGS when determining GM.
 - (1) You must consider insurance or other compensation received to offset the economic injury in determining the loan amount.
 - (2) You can't decline any EIDL application under Phase I for unsubstantiated economic injury (decline code 31).
 - (3) When processing applications for Rentals with 1 to 4 units, the LO must call the applicant or authorized representative and ask if there was any loss of rents and/or added expenses as a result of the disaster. If the answer is no, then the LO must decline the loan request for economic injury not substantiated. If the answer is yes, then the LO must get the information regarding the extent of lost rents and/or additional expenses due to the disaster and process using Phase I method, but not to exceed lost rents and/or additional expenses. Additionally, all conversations with the applicant must be documented in the chron log.
- b. Computation. Phase I EI = (Normal Annual Sales x Normal GM%) ÷ 6.
- c. CET Determination. If you determine that the applicant has no credit available elsewhere, you must assume that no personal, business, or affiliate resources are available to offset the EI amount.
- d. Loan Amounts. Phase I loan amounts cannot exceed the lesser of three times the SBA verified physical loss or \$100,000 for each applicant.
- e. Use of Proceeds. The use of proceeds is restricted to the categories of working capital and notes payable.
- f. Approval Authority. Any employee with an SLO delegation may take final action on a Phase I EIDL.

126. PHASE II METHOD

Phase II generally uses a longer injury period and can only be used when the applicant has applied for a business physical disaster loan. It requires a more detailed analysis, using an SBA Form 1618, "EIDL Addendum." It is intended for applicants who have

¶126

been operating for less than 1 year prior to the disaster; or, where the applicant contends the Phase I loan amount is insufficient, and will provide the additional information (SBA 1368) for a Phase II analysis. Phase II compares the business's Normal GM to the GM (actual or projected) during the injury period. Generally, the difference between the two is the economic injury.

a. Processing Procedure.

- (1) Identify the injury period in accordance with appendix 20. Generally, the injury period must not exceed 12 months.
- (2) Determine Normal Sales, Normal GM percent, Injury Period Sales and Injury Period GM percent in accordance with appendix 20. Make no adjustments to COGS when determining the GM percent, unless it is obvious that there has been a change in the components of COGS on the financial statements you are using. Interim or internal financial statements are not always comparable to year end statements or FTRs.
- (3) Determine if it is necessary to include any extraordinary items in the loan amount in accordance with appendix 20.
- (4) $\text{Phase II EI} = (\text{Normal Sales} \times \text{Normal Gross Margin percent}) \text{ minus } (\text{Injury Period Sales} \times \text{Injury Period Gross Margin percent}) \text{ plus Extraordinary Items.}$
- (5) You must consider any insurance or other compensation received to offset the economic injury in determining the loan amount.
- (6) If the applicant requested Phase II, but the result is less than Phase I, you must give the applicant the best alternative and proceed with the Phase I amount.

b. CET Determination. If you determine that the applicant has no credit available elsewhere, you must assume that no personal, business, or affiliate resources are available to offset the EI amount.

c. Loan Amounts. Phase II loan amounts cannot be more than \$1,000,000.

d. Use of Proceeds. The use of proceeds is restricted to the categories of working capital and notes payable.

- e. Approval Authority. Only cadre SLOs or others having a specific EIDL delegation from the AA/DA may take final action.

127. PHASE III METHOD

The greater amount of detail necessary for Phase III is due to the likelihood of extended injury periods and the identification of essential needs.

a. Processing Procedure and Computation.

You must use SBA Form 1618 (EIDL Addendum) to do a Phase III analysis. Unlike Phases I and II, Phase III does not use GM, but instead uses the MCM to measure EI. Processing procedures are as follows.

- (1) Identify the injury period in accordance with appendix 20.
- (2) Determine Normal Sales, Normal MCM percent, Injury Period Sales and Injury Period MCM percent in accordance with appendix 20. Adjust COGS and other variable expenses when necessary to make the normal MCM and injury period MCM components comparable.
- (3) Phase III Lost MCM = Normal MCM - Injury Period MCM.
- (4) Determine if it is necessary to include any extraordinary items in the loan amount in accordance with appendix 20.
- (5) Add (3) and (4). The result is total EI. This amount serves as a limit to the amount of needs that are attributable to the disaster and addressed by an EIDL.
- (6) Calculate the total financial needs of the business in accordance with appendix 20. The only criteria for the needs calculation is that the need be essential to the continued viability of the business. Needs must be reduced by the availability of excess personal or business or affiliate resources.

- b. Loan Amount. The loan amount cannot exceed the lesser of needs or EI. (When needs exceed economic injury, you must explain in the LOR how the applicant is going to meet this shortfall. If significant it may prohibit loan approval.)

- c. Use of Proceeds. Generally, eligible uses of Phase III proceeds are limited to working capital, notes payable and accounts payable.

¶127

- d. Approval Authority. Only Cadre SLOs or others having a specific EIDL delegation from the AA/DA can take final action on a Phase III approval; except final action on loans more than \$1.0 million must be taken by the AA/DA [see subparagraph 8.b.(1)(c)].

CHAPTER 13
ECONOMIC INJURY DISASTER LOANS:
TERMS AND CONDITIONS

128. LOAN TERMS AND INSTALLMENT AMOUNTS

- a. Interest Rates. By statute, we can authorize EIDLs only at the business no credit elsewhere (NCE) interest rate. See Paragraph 46.
- b. Maximum Term. The maximum term for an EIDL is 30 years.
- c. Establishing the Term. We base the loan payment upon the applicant's ability to repay the loan. However, when a significant portion of the loan amount is based upon frozen inventory or receivables, a shorter term may be appropriate because the applicant's cash flow will improve as the inventory or receivables are converted to cash. The shorter term would not be appropriate if the injury resulted from inventory which became obsolete or accounts which were charged-off.
- d. Installment Amounts and Frequency of Payments. Generally, you set EIDL payments in equal monthly installments of principal and interest which will fully amortize the loan. However the exceptions in subparagraphs 47.e.(1) and 47.f. apply.
- e. First Payment Due Date. Generally you use the standard deferment of 4 months (i.e., first payment due 5 months from date of Note). Approval authority for EIDL nonstandard deferments is subject to the provisions of subparagraph 47.g.(2). You can use a nonstandard deferment if:
 - (1) There is major damage involving lengthy repairs; or
 - (2) The injury period extends more than 5 months into the future; or
 - (3) The due date is at a low point in the applicant's business cycle (e.g., if the applicant does snow removal work, and has little cash flow during the summer months, payments should not begin until cash flow resumes).

129. COLLATERAL AND GUARANTEE REQUIREMENTS

- a. Unsecured and Secured EIDL Loan Limits. You must secure EIDLs in excess of \$5,000.
 - (1) You may secure EIDLs of \$5,000 or less only if the applicant voluntarily offers collateral (generally for tax purposes). In these cases, you must document in the LOR that you did not require or solicit an offer of collateral, but the borrower voluntarily offered it.
 - (2) If more than one EIDL is made to the same borrower (including its affiliates) for the same disaster, aggregate the loans. You must secure both loans if the aggregate amount is more than \$5,000.
- b. Availability and Adequacy of Collateral. The procedures for determining availability and adequacy of collateral for EIDLs are identical to those for physical business loans (see subparagraph 48.c).
- c. Guarantee Requirements. The guarantee requirements for EIDLs are identical to those for physical business loans (see subparagraph 49.b).

130. INELIGIBLE USES OF EIDL LOAN PROCEEDS. EIDL proceeds may not be used for:

- a. Payment of any dividends or bonuses;
- b. Disbursements to owners, partners, officers, directors, or stockholders, except when directly related to performance of services for the benefit of the applicant;
- c. Repayment of stockholder/principal loans, except when the funds were injected on an interim basis as a result of the disaster and nonrepayment would cause undue hardship to the stockholder/principal;
- d. Expansion of facilities or acquisition of fixed assets;
- e. Repair or replacement of physical damages;
- f. Refinancing long term debt;

¶130

- g. Paying down (other than regular installment payments) or paying off loans provided, guaranteed, or insured by another Federal agency or a Small Business Investment Company licensed under the Small Business Investment Act. Federal Deposit Insurance Corporation (FDIC) and Resolution Trust Corporation (RTC) are not considered Federal agencies for this purpose.
- h. Payment of any part of a direct Federal debt, (including SBA loans) except IRS obligations.
 - (1) If a direct Federal debt is delinquent, your recommendation must be based on independent written documentation from the appropriate Federal agency explaining how the delinquency will be cured.
 - (2) If a direct Federal debt is delinquent because of the disaster, we should make arrangements with that Federal creditor to have payments deferred or a similar action taken to bring the delinquency current prior to approval of an EIDL. If the Federal creditor cannot or will not cooperate, the likely result will be a decline of the EIDL request. However, if the applicant has other resources or recoveries, we should generally allow (and perhaps require) those resources to be applied first to ineligible needs, such as the payment of direct Federal debt.
 - (3) When processing during the injury period, it is generally appropriate for you to negotiate with Federal creditors to defer payments (or take similar action) until the end of the injury period. You must document why this was or was not imposed.

131. INSURANCE REQUIREMENTS

- a. Hazard Insurance. Secured EIDLs are subject to the same hazard insurance requirements as secured physical loans. (see paragraph 50.)
- b. Flood Insurance.
 - (1) By Statute. As a condition of any Federal assistance secured by improved real estate (or a manufactured home) located in a SFHA, the building and any personal property securing the loan must be covered by flood insurance before any loan disbursement.

¶131

- (2) For Credit Reasons. If the business location is not taken as collateral, but is in a SFHA or has been repeatedly flooded, we must require flood insurance for credit reasons. Generally, the amount of coverage will be the lesser of the loan amount or the maximum insurance available.
- c. Business Interruption Insurance. We don't generally require an EIDL recipient to purchase business interruption insurance as a condition of loan approval.

132. LOAN CLOSING AND DISBURSEMENT

We close EIDLs in the same manner as physical disaster loans. (See chapter 8.) Because there are no physical repairs associated with an EIDL, we generally make full disbursement as soon as the borrower has satisfied any and all relevant disbursement conditions.

APPENDIX 1

INDEX TO FORMS AND REPORTS

This appendix contains a listing of the authorized forms and reports used in conjunction with disaster loan making. These are available in each disaster area office.

<u>SBA Form</u>	(SBA Form unless otherwise identified)	<u>Paragraph</u>
5	Disaster Business Loan Application	63
5C	Disaster Home Loan Application	64
90-69	Disaster Assistance Registration (FEMA Form)	60
140	Loan Officer's Report - Disaster Home Loan	80
148	Guaranty	49
155	Standby Agreement	Appendix 11
159	Compensation Agreement	9,72,Appendix 11
160	Resolution of Board of Directors	Appendix 11
160A	Certificate as to Partners	Appendix 11
FD-258	Fingerprint Card (FBI Form)	74
300	Request for Inspection/Disbursement Report	Appendix 11
355	Application for Small Business Size Determination	105
370	Representative Index	72
403	Unsecured Note	95
413	Personal Financial Statement	64
601	Agreement of Compliance	53
649	Listing of Collateral Documents	Appendix 11
700	Disaster Home/Business Loan Inquiry Record	60,Appendix 11
717	Record of Congressional Inquiry	11
722	Equal Employment Opportunity Poster	53
722B	Equal Employment Opportunity Poster, Spanish Translation	53

Appendix 1

Appendix 1 (Continued)

<u>SBA Form</u>		<u>Paragraph</u>
739	Verification of Personal Property Damage	63
739A	Verification of Business Disaster Loss	64
743	Screening Check List Disaster Home Loans	69
793	Notice to New SBA Borrowers	53
912	Statement of Personal History	74
927	Mortgage	95
929	Deed of Trust	95
1059	Security Agreement	95
1363	Summary Decline Letter	61
1366	Borrower's Progress Certification	95
1368	Additional Filing Requirements EIDL Applications	62
1391	Loan Authorization and Agreement	86
1415	Coding Format for Loan Disbursement/Closing	Appendix 11
1416	Loan Disbursement/Closing	Appendix 11
1532	Non-Loan Accounting Modification of Disaster Loan	94
1616	Loan Officer's Report Disaster Business Loan	80
1617	Disaster Business Loan Spreadsheet	Appendix 19
1618A	EIDL Addendum Phase II1	26
1618B	EIDL Addendum Phase I	125
1618	EIDL Addendum Phase III	127
1621	Estimated Average Burden Hours per Information Requirement	63
1632	Request for Additional Funds for Protective Improvements	40
1646	Disaster Home Loan Application Return Notice	69
1711	Certification Regarding Lobbying	Appendix 11
1833	SBA Referral for Borrowers with Limited Repayment	85
1846	Statement Regarding Lobbying	Appendix 11

Appendix 1

Appendix 1 (Continued)

<u>SBA Form</u>		<u>Paragraph</u>
1852	6 Part Divided Case File Folder	Appendix 11
1913	Modification or Administrative Action	94
4506	Request for Tax Information (IRS Form)	63
8821	Tax Information Authorization (IRS Form)	63,64

Appendix 1

APPENDIX 2

ACRONYMS AND DEFINITIONS

This appendix contains acronyms and abbreviations used in this SOP. Acronyms and abbreviations used by other departments (i.e., Control, Loss Verification, Legal) generally do not appear in this appendix.

ACRONYMSA

"A"	Applicant
AA/DA	Associate Administrator for Disaster Assistance
AAD/FO	Assistant Area Director for Field Operations
AAD/LP	Assistant Area Director for Loan Processing
AAD/LV	Assistant Area Director for Loss Verification
AAR	Average Annual Revenue
AC	Area Counsel
AD	Area Director
ALCS	Automated Loan Control System
ANA	Available Net Assets (for Business Credit Elsewhere Test Purposes)
APD	Accelerated Processing Decline
ARC	American Red Cross

B

"B"	Borrower
BFE	Base Flood Elevation

C

CA	Cash Available
CASAD	Cash Available to Service Additional Debt
CBR	Credit Bureau Report
CBRS	Coastal Barrier Resources System

Appendix 2

Appendix 2 Continued

ACRONYMS

CCL	Conditional Commitment Letter
CC&Rs	Conditions, Covenants and Restrictions
CE	Credit Elsewhere
CET	Credit Elsewhere Test
CHRON	Chronological Record (Log or Sheet)
CF	Cash Flow
CFR	Code of Federal Regulations
COE	Corps of Engineers (U.S. Army)
COGS	Cost of Goods Sold

D

DAA/DA	Deputy Associate Administrator for Disaster Assistance
DAD	Deputy Area Director
DAD-1,2,3	SBA Disaster Loan Information Pamphlets (1=home, 2=business, 3=EIDL)
DAO	Disaster Area Office
D&B	Dun and Bradstreet
DBM	Disaster Branch Manager
DCS	Data Communication System
DD	District Director
DECA	Decline-Automatic (FEMA)
DFO	Disaster Field Office
DLB	Disaster Loan – Business
DLH	Disaster Loan – Home
DO	District Office
DOB	Duplication of Benefits
DRC	Disaster Recovery Center

E

ECOA	Equal Credit Opportunity Act
EI	Economic Injury
EIDL	Economic Injury Disaster Loan
ELE	Emergency Living Expenses

Appendix 2

Appendix 2 (Continued)

ACRONYMSF

FCO	Federal Coordinating Officer (FEMA)
FDM	Fixed Debt Method
FEMA	Federal Emergency Management Agency
FF	Furniture & Fixtures
FHA	Federal Housing Authority
FI	Flood Insurance
FIA	Flood Insurance Administration
FIRM	Flood Insurance Rate Map
FmHA	Farmer's Home Administration (now called Rural and Economic Community Development Services)
FMV	Fair Market Value
FOIA	Freedom of Information Act
FTR	Federal Tax Return

G

GAI	Gross Annual Income
GM	Gross Margin
GMI	Gross Monthly Income
GP	Gross Profit
GPM	Gross Profit Margin

H

HOA	Homeowner's Association
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development

I

IA	Individual Assistance (FEMA)
IFGP (IFG)	Individual and Family Grant Program
IG	Inspector General

Appendix 2

Appendix 2 (Continued)

ACRONYMS

IIP	Increased Insurance Premium
INV	Inventory
IP	Injury Period
IRM	Information Resource Manager (computer specialist)
IRS	Internal Revenue Service

J, K,L

LAA	Loan Authorization and Agreement
LCD	Loan Closing Document
LHI	Leasehold Improvements
LO	Loan Officer
LOR	Loan Officer's Report
LV	Loss Verifier

M

MAFD	Maximum Acceptable Fixed Debt
M&E	Machinery & Equipment
MCM	Modified Contribution Margin
MFD	Monthly Fixed Debt
MH	Manufactured Housing
MRP	Minimal Repair Program
MSE	Major Source of Employment

N

NCE	No Credit Elsewhere
NFIP	National Flood Insurance Program
NTC	National Teleregistration Center

Appendix 2

Appendix 2 (Continued)

ACRONYMSQ

OA	Other Assets (for Business Credit Elsewhere Test Purposes)
ODA	Office of Disaster Assistance
OE	Office Equipment
OHA	Office of Hearings and Appeals
OIG	Office of Inspector General
OSO	Office of Security Operations

P

PA	Public Assistance (FEMA)
PITI	Principal, Interest, Taxes and Insurance
PMQD	Portfolio Management Query Display
PP	Personal Property
PUD	Planned Unit Development

QR

RA	Regional Administrator
R/E	Real Estate
RECDS	Rural and Economic Community Development Services (formerly Farmer's Home Administration)
RECON	Reconsideration of SBA's Decline Decision
RMA	Robert Morris Associates
RO	Regional Office
RUS	Rest of the United States (for GS pay level purposes)
RV	Recreational Vehicle

S

SCORE	Service Corp of Retired Executives
SecAg	Secretary of Agriculture Designation

Appendix 2

Appendix 2 (Continued)

ACRONYMS

SFHA Special Flood Hazard Area
SIC Standard Industrial Classification
SLO Supervisory Loan Officer
SLV Supervisory Loss Verifier

TU

UP Use of Proceeds
USC United States Code
USDA United States Department of Agriculture

V

VA Veterans Administration

WX,Y,Z

Appendix 2

Appendix 2 (Continued)

DEFINITIONS

RESERVED

Appendix 2

APPENDIX 3
(paragraph 83)

REASONS FOR WITHDRAWAL OF APPLICATION

Code

- 51. Applicant did not furnish the requested additional information necessary to process the loan application.
- 52. Applicant's request - a change in the applicant's plans.
- 53. Applicant's request - no reason given.
- 54. Applicant's request - adequate insurance or other recovery available.
- 55. Applicant's request - [state basis of request].
- 56. Other - [specify reason]. (NOTE: Also use for policy reasons, such as when an otherwise approvable application is pending a formal character eligibility determination.)
- 57. Consolidation of multiple applications and/or duplicate claims received from a single applicant.
- 58. Damage consolidated with damage from related declaration.

APPENDIX 4
(paragraph 84)

REASONS FOR DECLINE OF APPLICATION

Code

- *21. Lack of reasonable assurance of applicant's ability to repay the proposed SBA loan and other obligations from earnings.
- 22. Lack of reasonable assurance of applicant's ability to repay the proposed SBA loan and other obligations from earnings within the 3-year statutory maximum loan term for applicant's with Credit Available Elsewhere. (NOTE: Only for business physical loans with credit available elsewhere. Does not apply to nonprofits.)
- 23. Lack of reasonable assurance that the business can be operated at a rate of profit sufficient to repay the proposed loan and other obligations from earnings. (NOTE: This reason to be used only for new business in startup phase.)
- 24. Disproportion of debts to net worth before and after the proposed loan. Total liabilities exceed business assets and/or owner's investment before and after loan. (NOTE: Never use as only reason for decline.)
- 25. Inadequate working capital after the loan. (NOTE: Never use as only reason for decline.)
- *26. Unsatisfactory experience on an existing or previous SBA loan.
- *27. Lack of reasonable assurance that the applicant will comply with the terms of the loan agreement based on an existing or previous Federal debt, specifically_____. (Note: Cite the delinquent Federal loan or obligation.)
- *28. Lack of reasonable assurance that applicant will comply with the terms of the loan agreement based upon unsatisfactory credit history obtained from a Credit Bureau. (NOTE: Specify the source of information.)
- *29. Lack of reasonable assurance that the applicant will comply with the terms of the loan agreement based upon adverse information received from sources other than a credit bureau. (NOTE: Specify the nature of information.)

Appendix 4

Appendix 4 (Continued)

Code

- 30. Physical injury not substantiated. (NOTE: Use only when the verified loss is zero.)
- 31. Economic injury not substantiated.
- 32. Not Eligible - the applicant's main activity is not eligible for assistance under the Economic Injury Disaster Loan Program. (NOTE: Use only for EIDLs.)
- 33. Not eligible because the applicant is other than small. (NOTE: Use only for EIDLs.)
- 34. Lack of satisfactory evidence that the funds required could not be obtainable without undue hardship through use of personal credit or resources of the business or its owners, partners, or shareholders. (NOTE: Use only for EIDLs.)
- 35. Not eligible - the damaged property/business is not located within the declared disaster area.
- 36. Not eligible - the damaged property is neither the primary residence of the applicant nor a qualified rental property. (NOTE: To be used for secondary homes, etc.)
- 37. Not eligible - the type of property that was damaged is not eligible for consideration under the disaster loan program. (NOTE: To be used for damage to ineligible items such as luxury items, RVs, etc.)
- 38. Not eligible - all losses have been fully compensated through insurance or other recoveries.
- 39. Not eligible - failure to maintain required flood insurance on existing SBA loan.
- 40. Not eligible - there is inadequate documentation, such as Federal Tax Returns and other independent evidence, which would establish the operation as a qualified business. (NOTE: This includes situations such as claimed business income not supported by FTRs, undeclared rental income, income from hobbies, business ventures not in the organizing stage, etc.)
- 41. Not eligible - refusal to pledge available collateral as security for the proposed loan.

Appendix 4

Appendix 4 (Continued)

Code

42. Not eligible because of policy reasons - other than those listed above. Specify the reason(s) for the decline.
43. Not Eligible for Character Reasons. SBA requires that all disaster assistance recipients be of good character. In the case of a corporation or partnership the character issue extends to the principals. SBA has determined that____(name of individual) does not meet the character standards. This determination was based upon the Statement of Personal History, related documents submitted with the application, and Government record checks.
44. Lack of reasonable assurance of applicant's ability to repay the proposed SBA loan and other obligations based on an application filed by only one____(Spouse, partner, co-owner or occupant, etc.) .
- *45. Not eligible - applicant owns property which is subject to an outstanding judgment lien for a debt owed to the United States, specifically_____.
(Note: Cite the outstanding judgment lien.)
- * Home loan applicants declined for these coded reasons are referred to IFGP for grant purposes.

Appendix 4

APPENDIX 5
(paragraph 87)

DRAFT CONDITIONAL COMMITMENT LETTER (CCL) CODES

NOTE: Only the underlined information is written on the draft CCL.

Code

- RD-01 A copy of the deed to real estate located at (street address) reflecting ownership in the name of (owner's name) that includes a complete legal description
- RD-02 A copy of the current vehicle registration to your (vehicle description, including year, make, and model).
- RD-03 A copy of the title or manufacturer's Certificate of Origin to your (manufactured home description, including year, make, and model).
- RD-04 A copy of the lease or rental agreement (or other proof of occupancy) to (street address).
- RD-05 A copy of the Certificate of Documentation or Registration to (vessel description, including name, length, and home port).
- RD-06 (Name of Borrower(s)) who must answer the following question:
- Are any of the ****BORROWERS**** (a) presently under indictment, on parole, on probation, or have ****THEY**** ever been (b) charged with or arrested for any criminal offense other than a minor motor vehicle violation, or (c) convicted, placed on any form of probation including adjudication withheld pending probation for any criminal offense other than a minor motor vehicle violation?
- RD-00 Customized Text.

Appendix 5

APPENDIX 6
(paragraph 13)

ELIGIBILITY OF NATIVE AMERICANS (INDIANS)

1. GENERAL

Disaster declarations can include all or a portion of an Indian Reservation. Individual Native Americans who own property located on a reservation are subject to certain eligibility requirements and restrictions.

2. HOME LOAN APPLICANTS

- a. Personal Property Losses. Native Americans who live on a reservation are eligible to apply for personal property losses. They are subject to the same eligibility requirements as any other disaster victim.
- b. Real Property Losses. Generally, eligibility for real property losses to a primary residence located on a reservation is limited to those structures or improvements associated with the primary home. There is no eligibility for the land or improvements owned by the tribe, since we consider the tribe to be a "governmental entity." You may also apply the concept of beneficial ownership to establish eligibility (see subparagraph 13.j.).

3. BUSINESS LOAN APPLICANTS

- a. Individually owned businesses located on a reservation are eligible to apply for losses to business property, except for land or improvements owned by the tribe, and are subject to other program requirements.
- b. Tribal owned businesses are discussed in appendix 7.
- c. Consult counsel in all cases where eligibility is unclear.

APPENDIX 7
(paragraph 13)

ELIGIBILITY OF TRIBAL OWNED BUSINESSES

1. GENERAL

SBA considers Indian tribes "governmental entities." They are ineligible for disaster assistance. However, in certain circumstances a tribal corporation may be separate from the Tribe. Under the following provisions, and with required documentation, area counsel should consider eligibility of a tribal owned business.

2. DOCUMENTATION REQUIREMENTS

The loan package must include the tribe's governing instrument (i.e. constitution or business charter) and the tribal corporate charter (may be an ordinance or resolution of tribal council). Examine the documents for the following:

- a. The governing document must expressly set forth powers and authorize delegation to a (business) committee (e.g. to manage the economic activity of the tribe).
- b. Chartering a tribal corporation must be a direct mode of executing the expressed powers (see 2.a. above).
- c. The charter authorizing a tribal corporation must designate the corporation to be separate and distinct from the tribe.
- d. The tribal corporate charter must contain a waiver of sovereign immunity. This may be accomplished:
 - (1) With an express waiver of sovereign immunity; or
 - (2) By use of a sue or be sued clause, in which case U.S. (Federal) courts should be specifically designated to be among the "courts of competent jurisdiction."

Appendix 7 (Continued)

- e. The tribal corporation must have its own assets to pledge as security for the loan (because the waiver in subparagraph 2.d., above, does not apply to tribal property or assets). We must examine the assets pledged to assure that they are not tribal property nor among the tribe's assets being held in trust or restricted status.

The tribe may include a written analysis by its attorney in support of the loan application and related documents.

APPENDIX 8
(paragraph 69)

ETHNIC AND GENDER CODES

<u>Ethnic Code</u>	One digit code designating the race/ethnicity category of the applicant.
<u>Code</u>	<u>Ethnic Category</u>
0	Black - A person having origins in any black racial groups of Africa.
1	Puerto Rican - A person of Puerto Rican origins regardless of race.
2	American Indian - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliations or community relations.
3	Hispanic (other than Puerto Rican) - A person of Mexican, Cuban, Central or South American, or other Spanish culture of origin, regardless of race.
4	Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or Pacific Islands. This area includes, for example, China, India, Korea, the Philippine Islands, and Samoa.
5	Eskimos and Aleuts - A person having origins in any of the original peoples of Alaska and the Aleutian Islands.
6	Undetermined (use only when the applicant's race/ethnicity is unknown)
7	Caucasian - A person having origins in any of the original peoples of Europe, North America, or the Middle East.
8	Multi-groups - Use this code for minority owned/controlled enterprises where partnership or corporate ownership/management is, in the aggregate, 51 percent or greater minority (codes 0-5), but no single group represents 51 percent or more.

Appendix 8

Appendix 8 (Continued)

<u>Women Owned Code.</u>	1 digit numeric code, designating businesses that are at least 51 percent women-owned.
<u>Code</u>	<u>Women Owned Category</u>
1	<u>No</u> - is not a women owned business.
2	<u>Yes</u> - is a women owned business.

APPENDIX 9
(paragraph 36)

SAMPLE CREDIT INQUIRY LETTER

Date: _____ SBA Control No.: _____

To: _____ Applicant(s): _____

Dear Sir or Madam:

The U.S. Small Business Administration (SBA) has received a request for disaster loan assistance from the above referenced person(s). Accordingly, we need credit and/or refinancing information from you. Our applicant(s) have granted us permission to access private financial information, and the SBA has the appropriate signature(s) on file. This is to certify that the SBA has complied with the applicable provisions of the Right To Financial Privacy Act of 1978, Title XI of Public Law 95-630. Pursuant to §113(h)(2) of that Act, no further certification shall be required for subsequent access by the SBA to financial records of the customer. **Please provide the following information and fax this form to (area code and phone number), or mail it to the address on the letterhead.**

1. Account or Loan Number: _____
2. Collateral Address: _____
3. Present Balance: \$ _____ As of (date): _____
4. Daily Interest Accrual: \$ _____
5. Repayment Terms: \$ _____ Frequency: _____ Maturity Date: _____
6. Prepayment Penalty? No _____ Yes _____ Amount or % _____
7. Are Payments Timely? Always _____ Usually _____ Sometimes _____ Never _____
8. Would you extend more credit? Yes _____ No (explain below) _____
9. Comments: _____

Sincerely,

SBA Loan Officer

Addressee please sign:

Signature/Title Date

Appendix 9

APPENDIX 10

RESERVED

Appendix 10

APPENDIX 11
(paragraph 12)

DISASTER LOAN CASE FILE ARRANGEMENT

(Within each section, documents are to be filed in the order listed.)

A. DIVIDED FOLDER, SBA FORM 1852.

AUTHORIZATIONS, MODIFICATIONS ETC. - PART I

This section contains the loan authorization, record of obligation of funds, and modification actions.

1. Loan modifications, followed by the loan accounting transaction record (LABH or LAUD), and the letter to the borrower.
2. Original LAA (SBA 1391) signed by the borrower(s).
3. File copy of the LAA.
4. Record of the obligation of loan funds (LABD 10).

CLOSING & SERVICING DOCUMENTS - PART V

This section contains evidence that the borrower satisfied the terms and conditions of the loan.

1. Attorney's check sheet.
2. Opinion of counsel.
3. Record(s) of transmittal of collateral to and receipt of collateral by the collateral cashier (SBA 649).
4. Copy of the Note signed by the borrower(s).

Appendix 11 (Continued)

5. Copy of the recorded mortgage(s) and/or deed(s) of trust.
6. Copy of the initial mortgage(s) and/or deed(s) of trust received prior to recording.
7. Copy of all other recorded security instruments.
8. Copy of all other initial security instruments received prior to recording.
9. Copy of the guaranty(s).
10. Copy of any other document(s), the original of which is retained in the collateral file.
11. Other documents required by the LAA which will be returned to the borrower when the loan is paid in full.
12. Copies of title insurance, title certificates, or affidavits of ownership.
13. Other documents relative to collateral, such as agreements of prior lienholders or landlords' waivers.
14. Evidence of the purchase of National Flood Insurance (or equivalent), if required, and evidence that SBA is named as loss payee or mortgagee, if required.
15. Evidence of the purchase of hazard or other insurance, if required, and evidence that SBA is named as loss payee or mortgagee, if required.
16. Assignment of insurance proceeds and related documents, or documentation of the status of pending or disputed insurance claims.
17. Corporation documents (resolution of board of directors, by-laws, charter, certificate of good standing, etc.) or partnership documents (certificate, agreement, etc.).
18. Other authorization requirements (e.g., building permits, builders' risk and workman's compensation insurance, construction contracts, lienwaivers, waivers of eligibility, modifications of lease terms, standby agreement, etc., and any letters which satisfy a condition.

Appendix 11

Appendix 11 (Continued)

19. Agreement of Compliance, SBA Form 601.
20. Lobbying Certificates, SBA Form 1711.
21. Compensation Agreement, SBA Form 159 (received after original application filing).

DISBURSEMENT & MISCELLANEOUS DOCUMENTS - PART VI

This section contains documents pertaining to disbursements and use of loan proceeds.

1. SBA Forms 1415 and 1416.
2. Copies of letters transmitting checks.
3. Records of PMQDs obtained after approval.
4. Other documents relative to disbursements.
5. SBA Form 1366, together with supporting documentation (receipts, etc.),
6. SBA Form 300.
7. Other materials relative to the use of loan proceeds.
8. Miscellaneous documents not applicable to other sections.

CORRESPONDENCE & CHRON - PART IV

This section contains records of written, verbal or telephone communication (and attempts to communicate) with applicants/borrowers.

Appendix 11 (Continued)

1. Chronological record.
2. Correspondence to and from the applicant/borrower, agents or representatives, Congressional inquirers, etc.

VERIFICATION AND PROCESSING REPORTS - PART III

This section contains processing decision(s) and supporting inspections and analyses.

1. Loan Officer's Report.
2. Draft LAA.
3. Analysis sheets, spreadsheets, and other worksheets.
4. Loss Verification Report.
5. Supporting documentation provided by the applicant (e.g., detailed descriptions of damage, contractor's estimates, engineer's reports, appraisals, etc.)
6. Worksheet and related documents prepared by the loss verifier.
7. SBA Form 743 and related records prepared by the screener.

APPLICATIONS AND SUPPORTING DOCUMENTS - PART II

This section contains the applicant's request and the basis for the credit decision. It includes the inquiry record or other form of registration.

1. Credit report(s).
2. Other credit information (e.g., history and experience on prior SBA loans, PMQDs obtained prior to the processing decision, loans from other government agencies, credit references, credit inquiry letters and replies, Dun and Bradstreet reports, etc.).

Appendix 11 (Continued)

3. DOB reports (e.g., insurance proof of loss forms, settlement sheets, policies or other descriptions of coverage, copies of insurance checks, information about the status of insurance claims, records of other compensation received or pending, etc.).
4. Required SBA forms (e.g., SBA 912, etc.).
5. Legal descriptions of property, copies of deeds, leases, proof of ownership, titles, licenses, birth, marriage, divorce and death certificates, etc.
6. Financial information supporting the application.
7. Income tax information, other evidence of income, and IRS 8821.
8. Letters from the applicant transmitting the application or as part of the loan request.
9. SBA Forms 5 or 5c.
10. SBA Form 700, FEMA registration (FEMA 90-69), and any records of contact during the initial interview or before the application was filed.

B. SINGLE FOLDER

This arrangement applies to the undivided file folder. Within each section, file documents in the same order as specified above.

LEFT SIDE TOP TO BOTTOM

1. Disbursement & Miscellaneous Documents (Part VI).
2. Closing & Servicing Documents (Part V).
3. Authorizations, Modifications, Etc. (Part I).

RIGHT SIDE TOP TO BOTTOM

1. Correspondence & Chron (Part IV).

Appendix 11 (Continued)

2. Verification & Processing Reports (Part III).
3. Application & Supporting Document (Part II).

Appendix 11

APPENDIX 12
(paragraph 59)

SAMPLE INCOME TEST TABLE

SBA MINIMUM Income Levels for Disaster Home/Renter Loan Consideration

(Households with income below these levels are referred directly to IFGP by FEMA Registrars)

These tables do not apply to households with self-employment income.

48 Contiguous States

<u>Household Size</u>	<u>\$\$Minimum Income Level</u>		
	<u>Week</u>	<u>Month</u>	<u>Year</u>
1	238	1,030	12,360
2	266	1,152	13,825
3	334	1,446	17,350
4	401	1,740	20,875
5	469	2,033	24,400
6	537	2,327	27,925
7	605	2,621	31,450
8	673	2,915	34,975
For each household member over 8, add	68	294	3,525

NOTE: This table is as of 10/08/99. Tables are updated at the beginning of the fiscal year.

APPENDIX 13

ALCS Cancellation Codes

The ALCS 161 screen includes the following cancellation codes:

Agency Cancellation

10. Failure to complete and return all loan closing documents.
11. Failure to satisfy all terms and conditions of the loan.
12. Adverse change - IFG referral.
13. Adverse change - Other.
14. Subsequent recoveries exceed verified loss.
15. Did not need all the funds.
16. Other reasons - Agency.

Cancellation at Borrower's Request

20. Adequate recovery from other sources.
21. Reluctant to incur additional debt.
22. Dissatisfied with loan terms and conditions.
23. Dissatisfied with insurance requirements.
24. Unwilling to pledge collateral.
25. Did not need all the funds.
26. Other reasons - Borrower.

APPENDIX 14

RESERVED

Appendix 14

APPENDIX 15

RESERVED

Appendix 15

APPENDIX 16
(paragraph 86)

CATALOG OF LOAN AUTHORIZATION TEXT

This appendix is reserved for the Catalog of Loan Authorization Text for disaster loans (version 5.0, 08/16/95). All conditions used by the loan officer preparing draft LAAs are included in the catalog.

Place your copy here for reference.

APPENDIX 17
(paragraph 14)

NONDISCRIMINATORY MEMBERSHIP COMPLIANCE LETTER

Name of Applicant
Street
City, State ZIP

RE: SBA Disaster Loan Application No. _____

Dear _____:

In connection with your organization's application for a disaster loan, we wish to call your attention to the fact that civil rights requirements of various Federal laws and Executive orders, SBA regulations, and the nondiscrimination certification on the application your organization submitted, encompass the employment, quality of services, and membership policies of all fraternal, civic, country club, or other membership groups. Any consideration of race, color, religion, sex, handicap, age or national origin of applicants for membership in your organization during the term of our loan would be inconsistent with the law, SBA regulations, and your commitment. SBA regulations are deemed to override any membership policies, in either the local or national charter or by-laws, restricting membership on the basis of race, color, religion, sex, handicap, age, or national origin.

Before your application can be processed, we must have a written certification from your group that your membership policies do not discriminate against any individual on the basis of race, color, religion, sex, handicap, age, or national origin and a written statement from the National Organization that your nondiscrimination policies will not cause you to lose your charter, membership, or other affiliation with the National Organization. We will also need a copy of your charter and by-laws.

Please prepare or obtain the necessary certification and copies as soon as possible.

Sincerely,

(Signature)
(Typed name and Title)
(Disaster Office)

FORMAT ONLY: (DO NOT PRINT AND STOCK)

Appendix 17

APPENDIX 18
(paragraph 80)

INSTRUCTIONS FOR COMPLETION OF THE SBA FORM 140

LOAN OFFICER'S REPORT (LOR)
DISASTER HOME LOAN

You must use Form 140 to process:

- ◆ All home applications; and
- ◆ All rental property applications from sole proprietors owning no more than 4 rental units (residential or commercial).

You must complete:

- ◆ The heading and sections C and E if you recommend an APD; or
- ◆ The heading and all sections in every other case.

Following this appendix is a completion sequence.

HEADING

You must complete the heading section as follows.

Action. Check the appropriate box.

Control No. The SBA control number.

Declared County. The county location (or other declared political subdivision) of the damaged property.

Name of Applicant(s). The names of all applicants.

Appendix 18 (Continued)

SIC Code. Either SIC code 6512 (commercial) or 6514 (residential) for 1-4 rentals.

Damaged Property Address. The damaged property address(es) from the SBA 5C or SBA 739.

Mailing Address. Either check the "same as..." box if the same as the damaged property, or enter the mailing address. Check the "temporary" box if appropriate.

SECTION A - ELIGIBILITY

You must complete section A, as follows.

1. Eligible Amounts. The amounts supplied by the LV for R/E and PP for the "SBA Verified Total Loss."

Ineligible PP. The amount of personal property items from the SBA 739, or other worksheets, identified as ineligible (e.g., antiques, collections, artwork, etc.) or the amounts in excess of functional value (e.g., the difference in allowance for a cloth coat versus the amount verified for a fur coat).

Less ARC, MRP, other recoveries. The amount of duplicated assistance received from sources other than insurance.

Less Net Insurance. The NET insurance proceeds for R/E and PP after deductibles, mandatory payoff of mortgages and insurance adjuster's cost, if any. If no specific PP insurance breakdown is available, deduct net PP insurance from items in the ineligible PP column (only to the extent it offsets that amount). Then apply the balance to eligible PP items.

Uncompensated Physical Loss. The difference between the SBA verified total loss, any duplication of benefits (ARC, MRP, etc.) and net insurance.

Eligible Physical Loss. The difference between the uncompensated physical loss and any excess amount(s) over the landscaping and administrative limits.

Appendix 18 (Continued)

2. Loan Amounts.

Applicant's Estimate. The applicant's estimate from the loan application. Write "N/S" (not stated) if no estimate is given.

Recommended. The individual recommended amounts for R/E, refinancing, PP, and the total. If the amount recommended varies from full eligibility, explain why in section D.

3. For CET (Section R).

- a. The total Uncompensated Physical Loss Above Eligibility from the sum of items marked with asterisks (*) in subsection A.1.
- b. The sum of the Eligible R/E and Eligible PP physical loss from subsection A.1.

SECTION B - INSURANCE COVERAGE FOR THIS LOSS

Check if flood or other insurance was in force. If "yes," you must complete the section. If "no," go to section C.

SECTION C - CREDIT

Check "satisfactory" or "unsatisfactory" for the results of your overall credit analysis. Complete the section for judgments and SBA experience. Explain any derogatory information in section T. You can't recommended approval if you check unsatisfactory.

SECTION D - COMMENTS

"Proposed (possible) terms/reasons were discussed with the applicant." Check yes or no in all cases. You must detail the discussion or efforts to contact on the chron sheet. Whenever possible, we require contact.

Appendix 18 (Continued)

SECTION E - RECOMMENDATION

You must always complete section E. Your approval and decline recommendations must agree with your conclusions in section L.

Approvals.

You must indicate the type of approval recommendation as follows.

- ◆ Circle "A" if approval is for full eligibility (or less at the applicant's request).
- ◆ Circle "L" if approval is for less than full eligibility due to limited repayment ability.

Complete the entry by filling in the loan terms.

Declines.

Circle "D" for any decline recommendation, regardless of the type and number of reasons.

Withdrawals.

Circle "W" for any withdrawal recommendation, regardless of reason.

Coded Reasons.

Indicate the appropriate two digit coded reason(s) for decline or withdrawal in the boxes provided.

SECTION F - OTHER RECOMMENDATION

Only completed for split decisions or if the reviewing official does not have the authority to take final action. Check the "approve" box or enter the coded reason(s) for decline or withdrawal.

Appendix 18 (Continued)

SECTION G - FINAL ACTION

Only completed by the official with delegated authority to take final action.

SECTION H - INCOME

You must always complete sections H, I and J unless an APD is recommended.

1. The year(s) of the FTR used for analysis and describe other proof of income.
2. From the loan application (or at present, if different).
3. Describe job stability (e.g., stable, poor, etc.).
4. The family size (includes applicant, co-applicant, and all dependents).
5. All continuing sources of income and all business fixed debt.

SECTIONS I and J MONTHLY FIXED DEBT AND THE FDM

See appendix 26 for how to identify monthly fixed debt and complete the FDM calculation.

SECTION K - REFINANCING

1. Applicant meets all refinancing criteria? Check yes or no. If "yes," you must complete the section. If "no," go to section L.
2. Amount to be refinanced. Recommended amount for refinancing.
3. Credit report requested from lender? Check yes or no. If "no," explain why not.
4. Justification, if required. Any relevant comments, particularly in cases of partial refinancing.

Appendix 18

Appendix 18 (Continued)

SECTION L - REPAYMENT

You must always complete section L.1. unless an APD is recommended.

1. Is repayment ability reasonably assured? Check yes or no.
2. If no, decline 21. If "no," STOP. Do not complete the balance of the LOR.
3. Recommended payment: If "yes," complete the entry and proceed.
4. Justification, if required.

You must justify the payment if:

- ◆ You exceeded the standard MAFD%, or
- ◆ The monthly payment is less than the standard one-third CA.

SECTION M - COLLATERAL

You must complete this section if you recommend approval.

Unsecured. You may only check this box if the loan amount, including companions, does not exceed the unsecured limit. If you check unsecured, go to section N. Otherwise, proceed.

Type and Location of Collateral. Enter the type (e.g., primary residence, rental property, relocation property, etc.) and location. If available, you must reference each collateral property to the legal description in the file.

FMV. The LV's Fair Market Value for all collateral.

Liens. The current approximate balance of each lien after any reduction by SBA refinance funds. You obtain this from the loan application.

Equity. The difference between the FMV and all liens. If equity is negative, show in <brackets>.

Appendix 18 (Continued)

Is collateral adequate? Check yes or no. If "no," you must explain why not according to paragraph 48.

SECTION N - RELOCATION

If the applicant isn't relocating, check the "N/A" box and go to section O. Otherwise, you must check the voluntary or involuntary box, or write the word "Mandatory." Provide all known details, including whether the relocation conforms to SBA's regulations.

SECTION O - FLOOD INSURANCE

You must complete section O if you recommend approval.

1. Is Flood Insurance required by Law? Check yes or no.

If Yes, on: Check one (or both) box(es) as appropriate.

2. Is Flood Insurance needed as a credit (policy) matter? Check yes or no.

If yes, on: Check one or more applicable boxes and state the basis for imposing this requirement.

SECTION P - CONSTRUCTION REQUIREMENTS NEEDED

You must complete section P if the loan includes any real estate funds. Check yes or no. Don't use the box labeled "some--explain".

NOTE: SBA Form 601 is not a construction requirement.

SECTIONS Q, R, AND S - CREDIT ELSEWHERE TEST (CET)

You must complete the CET if you recommend approval. Refer to appendix 24 for detailed instructions for completion of section Q (cash flow test), section R (other assets test), and guidance for section S, hardship waiver.

Appendix 18 (Continued)

SECTION T - ADDITIONAL COMMENTS

You must use section T for continuations of any comments made in other sections of the LOR or to make simple calculations (e.g., net insurance recovery, landscaping limits, etc.). Always reference the section you are continuing.

Appendix 18 (Continued)

COMPLETION SEQUENCE

You should complete the LOR in the following sequence to ensure you address all relevant aspects of processing.

1. HEADING
2. SECTION A - ELIGIBILITY
3. SECTION B - INSURANCE COVERAGE FOR THIS LOSS
4. SECTION C - CREDIT
5. SECTION H - INCOME
- SECTION I - MONTHLY FIXED DEBT
- SECTION J - FIXED DEBT METHOD CALCULATION
6. SECTION Q - CASH FLOW TEST
- SECTION R - OTHER ASSETS TEST
- SECTION S - HARDSHIP WAIVER (if applicable)
7. SECTION K - REFINANCING
8. SECTION L - REPAYMENT
9. SECTION N - RELOCATION
10. SECTION M - COLLATERAL
11. SECTION P - CONSTRUCTION REQUIREMENTS (if applicable)
12. SECTION O - FLOOD INSURANCE REQUIREMENTS
13. SECTION D - COMMENTS
14. SECTION E - RECOMMENDATION

APPENDIX 19
(paragraph 80)

INSTRUCTIONS FOR COMPLETION OF THE SBA FORM 1616

LOAN OFFICER'S REPORT (LOR)
DISASTER BUSINESS LOAN

You must use Form 1616 to process:

- ◆ All physical business applications except for 1-4 rentals owned by sole proprietors; and
- ◆ All EIDL applications except for 1-4 rentals owned by sole proprietors.

You must complete:

- ◆ The heading and sections A and G if you recommend an APD; or
- ◆ The heading and all sections in every other case.

Following this appendix is a completion sequence.

HEADING

You must complete the heading section as follows:

Action. Check original, first reconsideration, or appeal. Check physical, EIDL, or both.

Control No. The control number.

Companion No. The control number(s) of any other application(s) filed by the same applicant or any of its affiliates.

Type of disaster/declared county. The cause of the disaster and the county location (or other declared political subdivision) of the damaged property. In the case of an EIDL, enter the business location.

Appendix 19 (Continued)

Applicant's Legal Name. The legal name of the entity applying for the loan (see paragraph 86).

Applicant's Trade Name. The trade name or "dba" name, if applicable.

Damaged Property Address. The damaged property(ies) address(es) from SBA Form 5 or SBA Form 739A.

Mailing address. Either check the "same as" box if the same as the damaged property, or enter the mailing address. Check the "temporary until" box if the mailing address is not permanent, and indicate the duration.

Type of Business Organization. Check the appropriate box to indicate the type of business structure or organization. If box "Other" is checked, specify the type of business organization or structure.

Type of Business. State the nature of the business activity (e.g., car dealership).

SIC Code. The applicant's SIC code.

SECTION A - RECOMMENDATION

You must always complete section A. Your approval or decline recommendations must agree with your conclusions in section L.

Approvals.

Check the "approve" box and enter the terms of the recommended loan. State the number of employees for all approved loans in the comment section.

Declines.

Check the "decline" box and enter the coded reason(s) for decline.

Withdrawals.

Check the "withdraw" box and enter the coded reason for withdrawal.

Appendix 19 (Continued)

Proposed (possible) terms and conditions discussed with the applicant?

Check yes or no in all cases. You must detail the discussion or efforts to contact on the chron sheet. Whenever possible, we require contact.

SECTION B - OTHER RECOMMENDATION

Only completed for split decisions or if the reviewing official does not have the authority to take final action. Check the "approve" box and enter the terms, or check the decline or withdrawal box and enter the coded reason(s).

SECTION C - FINAL ACTION

Only completed by the official with delegated authority to take final action.

SECTION D - HISTORY OF THE BUSINESS

Concisely describe the background of the applicant business, including the following:

- ◆ What the business actually does;
- ◆ When operations began;
- ◆ How long under present management;
- ◆ Who is responsible for daily operations;
- ◆ Any changes in size or scope of operation under present ownership;
- ◆ Number and location of branches (if any);
- ◆ Peak business cycles and/or seasonality of business; and
- ◆ Plans for expansion, or changes to operations, etc.

Appendix 19 (Continued)

SECTION E - OWNERSHIP AND MANAGEMENT

You must complete section E in all cases, as follows.

Ownership and Management.

List each proprietor, each limited partner who owns 20 percent or more interest and each general partner, and each stockholder owning 20 percent or more voting stock. You must account for 100 percent of the ownership. Complete the remaining information as it pertains to each party.

Comments on Ownership and Management.

Briefly describe the industry experience and managerial capabilities of the owners/management, and include other relevant comments.

Comments on Guarantor(s).

Check the appropriate box to indicate if guarantees are required. If "yes," check the box indicating the type of guaranty. If no, explain why not.

SECTION F - AFFILIATES/SUBSIDIARIES

You must check the appropriate box when affiliates exist. If "yes," complete the remaining information for each affiliate and check the financial analysis box.

SECTION G - CREDIT

List the applicant, and if different, each party identified in section E and any affiliates or subsidiaries from section F. Provide brief comments about each party's manner of handling their business and personal obligations. Explain all prior adverse credit problems considered satisfactorily resolved and unlikely to recur. Check either "satisfactory" or "unsatisfactory" for each party listed and indicate the source of the credit data. Complete the balance of the section as it pertains to judgments and SBA experience for each party. You can't recommend an approval if overall credit remains unsatisfactory.

Appendix 19 (Continued)

SECTION H - COLLATERAL

You must complete section H if you recommend approval, as follows.

Unsecured.

You may only check this box if the loan amount, including companions, does not exceed the unsecured limit. If you check unsecured, go to section I.

Location.

The actual street address of the collateral on the line adjacent to its type.

Exh.

If available, you must reference each collateral property to its legal description in the file.

Lienholders.

The name of the lienholder(s) for each collateral item.

FMV & Source.

The Fair Market Value (FMV) and its source for each collateral item.

Amt of Liens.

The current approximate balance of each lien on the collateral property, as shown on the financial information in the file.

Equity.

The difference between the FMV and all liens. If equity is negative, show in <brackets>.

Total \$_____.

The total equity of all collateral.

Appendix 19 (Continued)

Is collateral adequate?

Check "yes" or "no" after comparing the total equity to the loan amount. If "no," you must explain why not according to paragraph 48.

SECTION I - FLOOD INSURANCE REQUIREMENTS (PHYSICAL ONLY)

You must complete section I if you recommend approval.

1. Is Flood Insurance required by Law? Check yes or no.

If Yes, on: Check one (or both) boxes as appropriate.

2. Is Flood Insurance needed as a credit (policy) matter? Check "yes" or "no".

If yes, on: Check one or more applicable boxes, indicate the amount of coverage, and state the basis for imposing this requirement.

SECTION J - FLOOD INSURANCE REQUIREMENTS (EIDL ONLY)

You must complete section J if you recommend approval.

1. Is Collateral Property in a SFHA? Check "yes" or "no." If "yes," or if flood insurance is needed as a credit (policy) matter, complete line 2.
2. Amount of Coverage on Collateral Property. Generally, "amount of loan" is adequate. You must justify the amount, if "other" is checked.

SECTION K - COMMENTS ON FINANCIAL CONDITION

You must complete section K based on the analysis performed on SBA Form 1617, "Disaster Business Loan Spreadsheet." Generally, all business LORs have one (or more) accompanying spreadsheets. You should discuss your analysis of each subsection, as follows.

Appendix 19 (Continued)

K(1) Comments on Balance Sheet, Ratio Analysis and Account Aging. This section corresponds to page 1 of the 1617 for the applicant, and should discuss:

- ◆ Who prepared the balance sheet ("A," CPA, Independent Accountant, etc.);
- ◆ Method of accounting (cash, accrual, etc.);
- ◆ Any adjustments you made to the balance sheet (breaking out long term debt, consolidation of fixed assets, placement of goodwill, etc.);
- ◆ Tangible net worth;
- ◆ Ratio analysis and comparison with Robert Morris Associates (RMA), if applicable; and
- ◆ Slowness in accounts receivable and payable (if applicable).

For example:

"Balance sheet was prepared by accountant on accrual basis. LO adjusted receivables to reflect amounts due from owner as other asset instead of current asset. No other adjustments were made. Net worth appears substantial, and is comprised mainly of equity in rental properties. No ratio analysis performed due to type of operation. No agings provided; A/Rs consist of rents due; no A/Ps as part of operations."

K(2) Comments on Income Statement, Cash Flow Statement and Schedule of Future Debt. This section corresponds to page 2 the 1617 and should discuss:

- ◆ Who prepared the income statement ("A", CPA, Independent Accountant, etc.);
- ◆ Method of accounting (cash, accrual, etc.);
- ◆ Degree of reconciliation to corresponding balance sheet (inventory vs. COGS; net profit vs. retained earnings, etc.);
- ◆ Trends;

Appendix 19

Appendix 19 (Continued)

- ◆ Any adjustments you made to COGS, expenses, etc.;
- ◆ Any adjustments you made to the applicant's forecasts, or any forecasts you made;
- ◆ Source of other income and outside income, if applicable; and
- ◆ Schedule of future debt structure (balloon payments, lines of credit, etc.).

For example:

"Income statements from FTRs. YTD P&L prepared by same accountant on same basis as balance sheet. LO excluded one-time repair expense resulting from disaster. No other adjustments. Forecast prepared by applicant to reflect increased gross rents. LO made no adjustments as historical trend supports 6 percent increase. Outside income from spouse's wages, and continuing. Debt schedule includes business and personal obligations, and reconciles to liabilities."

NOTE: Comments in this section refer to the applicant, not its affiliates, principals, etc. (comments on affiliate income are made in section F; comments on principals' income are made in section L). However, in the case of sole proprietors, if the income from the business and the owner are so intermingled that they cannot be separated, comment on the owner's income in this section.

K(3) Comments on Overall Financial Condition. You must conclude your analysis of the applicant's overall financial condition in this section, and discuss:

- ◆ Present financial condition and liquidity;
- ◆ Operational trends (growth, fluctuation, stagnation, etc.);
- ◆ Reasonableness (attainability) of forecasts;
- ◆ Reliance upon principals for capital infusions;
- ◆ Depletion of worth by owners; and

Appendix 19

Appendix 19 (Continued)

- ◆ The overall financial condition of the applicant, and checking the appropriate box.

For example:

"Overall financial condition is satisfactory. Applicant business has been growing steadily for 3-4 years and has operated at capacity (occupancy) since inception. Business is well capitalized and does not generally require working capital support from owners."

NOTE: If you check unsatisfactory, you cannot recommend an approval.

SECTION L - REPAYMENT ABILITY

You must complete section L, as follows.

L(1) Discuss Cash Available to Service Additional Debt (CASAD) and Repayment Ability. You must first enter:

- a. CASAD-applicant (obtain from SBA 1617);
- b. CASAD-affiliate, parent, subsidiaries, and principals (from SBA 1617s or other sections); and
- c. Total CASAD (sum of a and b) and proposed SBA annual payment.

You must then discuss:

- ◆ Continuance of income;
- ◆ Adequacy of CASAD and percentage required for SBA payment;

Appendix 19 (Continued)

- ◆ Ability of owners to meet necessary living expenses. (For principals of corporations and partnerships, apply the FDM. When applying the FDM to principles of corporations and partnerships, you must use only the income generated outside of the applicant business and affiliates. This includes analysis of S-corporations, even though the business income flows through individual tax returns. For sole proprietors, discuss the ability of the owners to meet their living expenses and the SBA payment from CASAD. To calculate CASAD of a sole proprietorship, all sources of revenue are to be aggregated to establish the gross annual income, less all debt - business or personal. The FDM does not apply.); and
- ◆ If repayment ability is or is not reasonably assured. Check the appropriate box. If you check "is not," you cannot recommend approval.

For example:

"Total CASAD is \$24,000, which reflects principal's compensation. Proposed annual SBA payment of \$8,000, representing approximately 33 percent of CASAD, leaves \$16,000 for ongoing operations and contingencies."

L(2) Payment Amount and Maturity Justification.

You must first check the appropriate box for the CET result. Then you must discuss:

- ◆ The amount of the actual monthly payment.
- ◆ Any variance to the standard one-third CASAD target payment; and
- ◆ Loan maturity.

SECTION M - LOAN AUTHORIZATION CONDITIONS

You must complete section M if you recommend approval and include any non-standard conditions. You must:

Appendix 19 (Continued)

- ◆ Justify all nonstandard conditions; and
- ◆ Not impose conditions the applicant cannot meet.

SECTION N - INSURANCE COVERAGE FOR THIS LOSS

Check "yes" or "no" for questions 1 and 2. If "yes" to either question, you must complete the balance of section N. Otherwise, go to section O.

SECTION O - REFINANCING

1. Applicant meets all refinancing criteria? Check "yes" or "no." If "yes," you must complete the balance of the section, as discussed below. If "no," go to section P.
2. Refinancing eligibility discussed with applicant on: The date of the discussion.
3. Amount to be refinanced. Amount recommended for refinancing and the name of the lienholder(s).
4. Credit report requested from lender? Check "yes" or "no." If "yes," discuss credit history. If "no," explain why not.
5. Justification, if required. Any relevant comments, particularly in cases of partial refinancing.

SECTION P - ELIGIBILITY

You must complete section P for all physical damage applications.

SBA Verified Total Loss.

On the line for "SBA Verified Total Loss," enter the amounts supplied by the loss verifier for R/E, M&E, FF, and inventory. If LHI were verified, show losses in the R/E column. Obtain these figures from the SBA Form 739A without consideration of limitations (ineligible amounts, landscaping limits, legislative limits).

Appendix 19 (Continued)

Less Net Insurance.

The NET insurance proceeds after deductibles, mandatory payoff of mortgages and insurance adjuster's cost.

Less other recoveries.

The amount of duplicated assistance received from sources other than insurance.

Uncompensated Physical Loss.

The difference between the SBA verified total loss, any other recoveries, and net insurance.

Eligible Physical Loss.

The difference between uncompensated physical loss and any excess amount(s) over the landscaping limit, any ineligible amount and amounts over the legislative limit.

Eligible Refinancing.

The amount of eligible refinancing.

Amount Requested.

The total requested amount in the last column. Obtain this from the loan application. If the applicant did not specify a particular amount, write "N/S" (not stated) in the total column.

Recommended.

The individual recommended amounts for each category and the total.

Comments on Eligibility.

You must explain the reasons if the amount recommended is less than the eligible amount (e.g., applicant's request; limited repayment ability, etc.).

Appendix 19 (Continued)

SECTION Q - RELOCATION

If the applicant isn't relocating, check the "N/A" box and go to section R. Otherwise, you must check the voluntary or involuntary box, or write the word "mandatory". Provide all known details, including whether the relocation conforms to SBA's regulations.

SECTION R - CONSTRUCTION REQUIREMENTS

You must complete section R if the loan includes any R/E or LHI funds. Check yes or no. Don't use the box labeled "some-explain."

NOTE: SBA Form 601 is not a construction requirement.

SECTION S - CREDIT ELSEWHERE TEST (CET)

Refer to appendix 25 for detailed instructions for completion of the business CET and authorized hardship waivers.

NOTE: The section S on page 7 of the LOR is no longer used (see appendix 25).

COMPLETION SEQUENCE

The LOR should generally be completed in the following sequence to insure all relevant aspects of processing are addressed.

1. HEADING
2. SECTION P - ELIGIBILITY
3. SECTION N - INSURANCE COVERAGE FOR THIS LOSS
4. SECTION D - HISTORY OF THE BUSINESS
5. SECTION E - OWNERSHIP AND MANAGEMENT
6. SECTION G - CREDIT
7. 1617 - SPREADSHEET(S)
8. SECTION K - COMMENTS ON FINANCIAL CONDITION
9. SECTION F - AFFILIATES/SUBSIDIARIES
10. SECTION S - CREDIT ELSEWHERE TEST
11. SECTION O - REFINANCING
12. SECTION L - REPAYMENT ABILITY
13. SECTION Q - RELOCATION
14. SECTION H - COLLATERAL
15. SECTION I/J - FLOOD INSURANCE REQUIREMENTS
16. SECTION R - CONSTRUCTION REQUIREMENTS
17. SECTION M - LOAN AUTHORIZATION CONDITIONS
18. SECTION A - RECOMMENDATION

APPENDIX 20
(paragraphs 125, 126, and 127)

INSTRUCTIONS FOR COMPLETING SBA FORM 1618

EIDL ADDENDUM

The EIDL Addendum allows for a great amount of detail when appropriate. You complete it only to the extent necessary to make your recommendation.

1. WHEN TO USE THE EIDL ADDENDUM

- a. For Phase I analysis, use SBA 1618B. Complete sections T, X, and Y as needed.
- b. For Phase II analysis, use SBA 1618A. Complete sections T, U, W, X, and Y as needed.
- c. For Phase III analysis, use SBA 1618. Complete all sections, as needed.

2. USE AND APPLICABILITY OF THE EIDL ADDENDUM

Section T, Applicant Identification. Use to establish basic eligibility in terms of location, activity and size. Applies to all Phases.

Section U, Injury Period Analysis. Use to determine the time period the business is affected by the disaster. Applies to Phases II and III.

Section V, Needs Analysis. Use to determine the necessary cash outlays which the business will be unable to fund due to the disaster. Applies to Phase III.

Section W, Injury Analysis. Use to measure the effects of the disaster on the overall financial condition of the business. Applies to Phases II and III.

Section X, Conclusions of EI Analysis. Use to summarize the analysis and set the loan amount. Applies to all Phases.

Appendix 20 (Continued)

3. COMPLETION OF THE EIDL ADDENDUMSection T.

- a. Name of Applicant. The legal name and trade name (if applicable) of the applicant business.
- b. Eligible Location. The location of the applicant business (see subparagraph 117.a.).
- c. Business Activity. The activity of the applicant business prior to any consideration of affiliation (see subparagraph 117.b.).
- d. Affiliates. State if there are any concerns affiliated with the applicant business.
- e. Primary Activity. State the primary activity of the affiliated group. If there are no affiliates, this is the same as the business activity.
- f. Size Standard for the Industry. The size standard that corresponds with the SIC code of the primary activity (see subparagraph 117.c).
- g. Is the Applicant an Eligible Small Concern? Check "yes" or "no." If the decision is not obvious, attach a nonformal size determination worksheet and check the appropriate box (see appendix 21).

NOTE: We don't require further analysis if the applicant is ineligible by reason of location, size, or activity. You must decline the request.

Section U.

The injury period is the time period during which the business feels the adverse affects of the disaster. You must determine the injury period at the outset because this time frame is a key element for the needs and injury analyses. The injury period does not necessarily begin with the date of the disaster, nor does it necessarily correspond to the incidence period stated in the declaration or designation. You must thoroughly understand the applicant's business cycle to accurately determine the recovery period. Full recovery is often contingent upon completion of one of more business cycles.

- a. The beginning date of the disaster and the date the resulting economic injury began.

Appendix 20 (Continued)

These may be the same date, or there may be a delayed effect (such as in SecAg designations). All Phase I and Phase II applications result from physical damage and the beginning date is the incidence date in the declaration. The onset of the injury can never predate the disaster. Plot dates of significance which impact the duration of the injury period.

- b. If there is no physical damage to the applicant's business, the onset of the injury may be delayed. This usually occurs when the injury is not the result of sudden physical damage. In these cases you should first complete the monthly sales analysis in section W.1.a. to identify the onset of the injury. (You must plot the sales data first in all Phase III cases).
- c. The dates of events affecting the duration of the injury period; e.g., the date of completion of repairs if physically damaged; the completion of the business cycle; etc.
- d. The end of the injury period (the return to normal operations), actual or projected.

Section V.

The Basis for a Phase III EIDL is Needs. Needs are the normal working capital requirements for the injury period, less costs not incurred because of the disaster, plus disaster related costs. Working capital generated from operations during the injury period and available excess business and personal resources reduce the amount of needs.

Many needs are apparent after your initial review of the financial information in the file. The applicant may advise us of problems that have been or are being experienced. When you complete the spreadsheets, you can identify needs that are not immediately obvious. An analysis of the spreadsheet and its ratios may help you verify the applicant's requests.

You may reduce the degree of injury analysis necessary to support the needs if you identify needs before computing injury. In some cases there may be no needs, and the business may already have returned to a normal level of operations. If there are no needs, there is no basis for an EIDL, and generally no further analysis is necessary. You divide needs into three categories, as follows.

- a. To-date needs are normal obligations already incurred (usually reflected as liabilities on the most recent available post-disaster balance sheet) which the

Appendix 20 (Continued)

business is presently unable to pay as a result of the disaster. They include funds necessary to bring delinquencies current and to restore working capital to normal levels. To-date needs are divided into two categories so you can identify problems:

- (1) Needs from transactions which predate the disaster; and
- (2) Needs from transactions which post-date the disaster but predate processing.

NOTE: Post-disaster needs resulting from pre-disaster transactions are not necessarily excluded from consideration. For example, some businesses, particularly seasonal ones, may run behind on payments during their slow season and catch up during the busier season.

- b. Future needs are normal obligations which the business won't be able to meet throughout the remainder of the injury period. They will sometimes be a continuation of to-date needs, such as:

- (1) Fixed debt payments necessary to maintain the current status of long term debts; or
- (2) Payments of ongoing fixed expenses such as rent; utilities; insurance premiums; or the owners draw/salary when the draw is both normal and essential. Future needs do not exist if the injury period is over and the balance sheet date corresponds to, or is dated later than, the end of the injury period. In this case, all disaster related economic injury due to an inability to pay normal and necessary operating expenses should be reflected on the balance sheet of the applicant.

- c. Extraordinary items are needs outside of normal operations and directly caused by the disaster. You list these needs in column (f) to separate them from the needs that must be supported by the injury analysis. Extraordinary items can include:

- (1) Temporary rent or storage fees, additional advertising costs, etc.;
- (2) Accelerated debt due to the disaster (see section W.2.);

Appendix 20 (Continued)

- (3) Inventory replacement may be an extraordinary item. For example, in the spring, a clothing store located in a disaster area is left with an inventory of winter clothing and has no funds to order summer stock. The cost of ordering summer inventory represents an additional need. If you recommend inventory replacement as EI, and a physical loan was also approved for inventory, you must be sure that you don't duplicate the physical loan; and
 - (4) Extraordinary items already paid will not show up in column (f) as needs because the applicant may have diverted funds normally used for customary expenses to pay them. This increases the amount of to-date needs shown as liabilities on the balance sheet and in columns (c) and (e). Section W.2. discusses this possibility.
- d. Resources and Recoveries. EIDLs may only fund uncompensated losses. Once you identify all needs, you must determine if any recoveries are available to alleviate these needs. The most common recoveries are business interruption insurance and state or local economic development grants.

If the applicant already received and used recoveries (or if they show on the balance sheet as cash), the needs you identify represent the remaining needs after injection of the recoveries. However, if not applied, deduct them here. If you anticipate a future recovery but details are uncertain, proceed as if there is no recovery and condition the LAA accordingly.

SBA regulations require EIDL applicants to use personal and business assets to alleviate the injury to the greatest extent feasible, without incurring hardship. "To the greatest extent feasible" means to the extent these resources are not necessary for the firm's survival or for the principal's livelihood. To identify excess resources and assets, review the applicant's financial statements to determine if part or all of the needs might be alleviated through:

- (1) Sale or utilization of assets not used in normal business operations; or
- (2) Sale or utilization of liquid assets which would not result in considerable loss to the business, or which are not required for reserves, immediate expansion, etc.; or

Appendix 20 (Continued)

- (3) Financial resources of the parent firm controlling the applicant, affiliated firms, the proprietor, each general partner, each limited partner or affiliated group of limited partners who own 20 percent or more of the partnership, and each stockholder or affiliated group of stockholders with 20 percent or more ownership, as appropriate; or
 - (4) Private credit sources.
- e. Needs Summary. Complete section V to the extent possible, listing the identified needs in the appropriate columns. Summarize the resources and recoveries to be applied to the total needs. Do not complete the final totals until later as subsequent analysis may uncover information which will affect the totals. If there are no identified remaining needs and the business has resumed normal operations, the analysis is complete and no substantial economic injury has been sustained. If there are no remaining needs but the injury period is ongoing, you must complete section W to determine future needs.

Section W.

There are two components of injury. You use section W to measure the injury to the business. The injury analysis is divided into two sections: "Injury from Operations" and "Balance Sheet Analysis and Extraordinary Items." Injury from Operations is further divided into two parts: (a) Monthly Sales Analysis (Phases II and III); and (b) Modified Contribution Margin (MCM) Analysis in Phase III (or GM analysis in Phase II). The most common injury is from operations. The monthly sales analysis measures the amount of lost sales. The MCM (or GM in Phase II) analysis measures the impact the reduction in sales had on funds available to maintain operations. This injury from operations is one component of injury. The other component of injury, the balance sheet analysis and extraordinary items, identifies additional injury not reflected in the operations. Section W addresses each component separately.

a. Injury from Operations - Monthly Sales Analysis (Section W.1.a.).

Most needs are generally attributable to reduced revenues. You must complete the monthly sales analysis to evaluate the impact of the disaster on operations. This helps identify the injury period. To measure the amount of lost sales, you determine:

- ◆ Sales had the disaster not occurred (normal); and
- ◆ Sales that actually occurred or will occur during the injury period.

Appendix 20 (Continued)

In section W.1.a., the initial month used in the sales analysis corresponds with the first month of the business' fiscal year. Spread the monthly sales figures for the 3 years preceding the disaster and for the year to date. If 3 years of sales figures are unavailable (due to the age of the business or inadequate financial records), obtain at a minimum the monthly sales figures for the injury period to date and for any corresponding historical periods available. When the availability of monthly sales figures is limited, obtain the best available historical figures (i.e., quarterly, semi-annual, or annual), along with an explanation of normal business cycles from the applicant. Using average monthly figures from quarterly, semi-annual, or annual figures could substantially distort business cycles, so you must obtain information about any seasonality of the business.

(1) Determining Normal Sales.

Normal sales are those which would have been attained had the disaster not occurred. You must first review historical sales figures and identify and apply trends to historical figures. Once you determine normal sales, insert them in the "Normal" columns of section W.1.a. for the months corresponding to the injury period and total the columns.

(2) Identifying and Applying Trends.

A trend can be upward, downward, fluctuating, stable, or undetermined.

Historical annual figures may suggest a certain trend. However, unless the corresponding injury period is also annual, seasonality or changes in business cycles may result in an annual trend which is different from the trend within the injury period. Therefore, to identify the appropriate trend, you must compare the historical sales only for the months which correspond to the months of the injury period (e.g., if the injury period is May to July, normal should be based upon the sales trend for May to July over the previous years). Use the following to determine trends:

- (a) Upward. If the sales trend is upward, project continued growth as normal. For example, if the disaster injury period is January to June, and the historical data for these same months show respective 10 and 14 percent increases in sales during the corresponding

Appendix 20 (Continued)

periods, project a 12 percent increase in sales (average growth rate for the 2 previous years) to obtain the estimated normal sales. However, there could be a historical upward trend, but the upward trend itself could be decreasing. In the example above, if the historic upward trend was a 14 percent increase followed by a 10 percent increase, the trend is still upward but at a decreasing rate. In these cases an average may not be representative. Use the most recent growth rate to project normal.

- (b) Downward. If the sales trend is downward, use the most recent year prior to the disaster as normal. This gives the benefit to the applicant as it assumes the business will duplicate the previous year. Due to the existence of declining industries and failing businesses, you do not automatically assume a declining trend has stopped when you are analyzing repayment ability.
- (c) Fluctuating. If the sales are fluctuating, you must determine if this is due to the accounting method, a business cycle extending beyond one year, or other economic factors. These factors are most prevalent in businesses engaged in major construction projects, media production, etc. In most of these cases, you base normal sales on the predisaster 3-year average. If the basis for forecasting normal sales is anything other than an average of the three predisaster years, you must justify your analysis in the LOR.
- (d) Stable. If the sales are stable with little change during the months of the injury period from year to year, use the sales for the months of the injury period from the last year prior to the disaster as normal.
- (e) Undetermined. In some cases the sales trend may be undetermined (e.g., when a business is new and has not had adequate time to establish historical patterns). You may need to rely upon financial forecasts to establish normal sales. You must determine if the forecast is reasonable and attainable (without the disaster) before using it.

Appendix 20 (Continued)

NOTE: The above principles are guidelines, and it may be appropriate to deviate from them if circumstances warrant. You must justify any deviation in the LOR.

(3) Exclusions Due to Abnormal Occurrences.

Possibly, an abnormal occurrence in one of the prior periods may skew the results of your trend analysis. For example, a previous disaster or the serious illness of the owner could result in abnormally low sales during one of the periods. Similarly, the influx of a major construction project into an area could create a temporary business boom, which may not be sustained. In these examples, the sales indicated by the other years may be more representative of normal. If an abnormal occurrence exists, the trend analysis may exclude that period. The exclusion of a prior period does not imply all three periods should be ignored, or that you should search further back in history for a positive trend.

Recent (within the past few years) changes in the size or scope of operations can alter what is normal. For example, if a dry cleaner operated from only one location, but 2 years ago expanded by adding a second location, the historical sales and trends from the one-location operation would not be representative for comparison purposes when establishing normal. The same theory applies to businesses which have significantly changed their product mix or services in recent years. Your ability to recognize changes is critical to accurate and consistent analysis. After you identify the trend and establish normal, complete the appropriate lines in section W.1.a.

(4) Determining and Estimating Injury Period Sales.

Determine the sales during the entire injury period (the actual to-date sales plus the estimated sales during the remainder of the injury period). You only use estimated sales when the injury period is not over at the time of processing. If the injury period is ongoing, list the actual monthly sales to the most current date possible in the "Injury Period" columns. Review these figures and information available regarding the effects of the disaster on operations, and estimate the expected sales figures for the remainder of the injury period. Indicate estimated sales with an "e" to differentiate them from actual sales.

Appendix 20 (Continued)

b. Injury from Operations - Modified Contribution Margin (MCM) Analysis (or Gross Margin (GM) Analysis in Phase II) (Section W.1.b.).

In Phase III, you use the MCM analysis to calculate the funds a business has or will generate to pay fixed expenses, service debt, compensate the owners (if applicable), and provide for its working capital needs. In Phase II, you use the GM analysis.

In section W.1.b., you use the normal sales from W.1.a. to calculate an approximation of the amount of funds normally available to apply towards fixed costs, etc. You use the injury period sales to calculate a reasonable estimate of the amount that was or will be generated to apply towards needs. The difference between these two amounts is the lost MCM. It is the shortfall of funds from what the business would have been able to generate and what was actually generated.

(1) Definition of Gross Margin (GM).

GM is sales less cost of goods sold (COGS). You do not adjust COGS unless there is a change in the components of COGS from year to year.

(2) Definition of Modified Contribution Margin (MCM).

MCM is sales, less COGS, less expenses which are obviously variable. "Obviously variable" expenses are totally dependent on sales, (e.g., commission expense; delivery expense; etc.) and not included in COGS. You must review the operating statements and identify as variable only those expenses that are dependent on sales. There may have been some expenses not incurred because of the disaster due to a lack of sales. However, you do not adjust these because they are totally variable and are accounted for in the Actual MCM percent calculation. If there are no variable expenses, the MCM is the same as GM.

(3) Calculating Normal MCM or GM percent.

You calculate the MCM or GM for each of the previous years (or other applicable period) in section W.1.b. You then calculate the MCM/GM percent for each of those years and record the result on the appropriate line. You determine the Normal MCM/GM percent by applying the same trend analysis principles used to calculate Normal Sales. Generally, you

Appendix 20 (Continued)

determine Normal MCM/GM percent on an annual basis because monthly income statements are not available. You must explain any deviation from the trend analysis guidelines if Normal MCM/GM percent does not follow directly from the trend analysis.

(4) Calculating the Injury Period MCM or GM percent.

The injury period MCM/GM percent is generally the same as normal because the financial information is not available for a separate calculation.

However, sometimes the actual MCM/GM percent for the injury period may differ from the Normal MCM/GM percent. For example, the applicant was forced to liquidate merchandise at a substantial reduction. You must justify any deviation if the MCM/GM percent for the injury period differs from what would be indicated by normal.

(5) Calculating Lost MCM or GM.

You calculate Lost MCM or Lost GM as follows:

- (a) Multiply the Normal Sales by the Normal MCM/GM percent;
- (b) Multiply the actual/forecasted injury period sales by the actual/forecasted injury period MCM/GM percent; and
- (c) Subtract the result of the first calculation from the result of the second calculation.

NOTE: For Phase III analysis, the difference is the lost MCM. For Phase II analysis, the difference is the lost GM and is also the loan amount if there are no extraordinary items.

(6) Returning to the Needs Analysis (Phase III only).

You may need to return to section V to finalize the estimate of future essential needs if the injury period is not over.

Use the historical information to determine the funds necessary to meet

Appendix 20 (Continued)

normal fixed costs and debt service requirements for the months remaining in the injury period. Next, use the actual MCM percentage for the injury period and calculate the MCM which will be generated for the months remaining in the injury period. Use these calculations to amend the estimate for future essential needs in column (d), as needed.

(7) Completing the MCM Analysis (Phase III only).

If the lost MCM covers the remaining essential needs on line V.12.(e), you do not need to complete section W.2. Go to section X to conclude the EI analysis. If the lost MCM is less than the remaining essential needs on line V.12.(e), go to section W.2. to determine if there is additional injury.

c. Balance Sheet Analysis and Extraordinary Items (Section W.2.) (Phases II and III).

Economic injury is not always limited to lost sales or reduced margins. It may include extraordinary items, which generally result from the inability to convert current assets to cash, or the diversion of cash to meet additional expenses caused directly by the disaster. You must analyze extraordinary items because this injury usually is not revealed in the lost MCM/GM analysis. You must be careful not to duplicate the injury from lost MCM when determining extraordinary items. You may need to make comparative balance sheet and other analyses to identify this additional injury, which generally occurs in one or more of the following categories:

(1) Frozen Inventory.

A business may have additional injury if it is unable to sell inventory due to the effects of a disaster. This may include: additional interest expense to carry the inventory; storage fees to hold the inventory; restocking and freight charges to return it; future losses in GM to liquidate it; etc. This is common with seasonal merchandise such as fertilizer, ski equipment, boats, farm equipment, holiday goods, etc. In other cases, the general income reduction in a disaster area will cause certain inventory to move more slowly.

Appendix 20 (Continued)

Some businesses, such as furniture and appliance dealers, automobile and farm equipment dealers, etc., may have floor planned inventory. You must understand the business's inventory financing arrangements. Floor plan financing is provided by the manufacturer or a commercial finance company, and terms may vary greatly. For example, there may be an interest free period, interest only payments, or required periodic principal reductions (curtailments) due. Frozen inventory financed by floor plans can result in a demand for payment of part or all of the floor plan note prior to the sale of the inventory (creating a situation similar to a lender accelerating debt).

You calculate frozen inventory by reviewing the balance sheets and calculating the relevant ratios and comparing the results from the injury period to the prior period(s). You must identify any multi-year trends or fluctuating inventory turnover ratios that could indicate a greater or lesser injury.

(2) Frozen Accounts Receivable (A/R).

Frozen A/R creates injury in much the same way as does frozen inventory. When an applicant's receipt of payments on credit sales becomes slow, the cash available to pay fixed and other expenses is reduced. Since accrual income statements reflect only sales, and not the receipt of funds, the injury from frozen receivables will not be reflected in the lost MCM/GM analysis. You can measure frozen A/R by comparing:

- ◆ The pre-disaster and post-disaster A/R agings; and
- ◆ The pre-disaster and post-disaster receivables' turnover ratios (or days receivable).

You calculate frozen receivables by reviewing the balance sheets and calculating the relevant ratios and comparing the results from the injury period to the prior period(s). You must identify any multi-year trends or continuing collection problems that could indicate a greater or lesser injury.

Appendix 20 (Continued)

The amount of injury attributable to frozen accounts receivable cannot exceed the actual amount of frozen receivables. When the receivables are uncollectible, they are considered an extraordinary item and will generally result in a 1:1 EI.

Frozen A/R creates additional injury and the need is reflected in the business's inability to pay creditors, fixed debt, or operating expenses.

(3) Eligibility for Accelerated Debt.

The need to meet accelerated debt is normally covered in section V of the needs analysis as an extraordinary item. This injury is not measured by the lost MCM or GM. The fact that the debt has been paid does not reduce injury and may not reduce needs.

Accelerated debt arises from obligations which are frequently (quarterly, semi-annually, or annually) renewed or rolled-over, such as demand notes. The amount accelerated is the need. Eligibility is limited to the average amount the debt was previously reduced during the period corresponding with the injury period. This represents the true current portion the applicant could have paid had the disaster not occurred.

The disaster may cause the lender to require an accelerated payment in excess of the normal amount. This is because the economic injury resulting from the declared disaster has so weakened the condition of the borrower that the lender insists on a pay-out or a major reduction in the loan balance. Generally, amounts demanded by the lender in excess of the average previous reduction aren't eligible. However, in these cases, the applicant incurred a need which would not have otherwise occurred. Demands for accelerated debt payments may create additional eligibility, subject to the following restrictions.

- ◆ The lender must offer reasonable justification that the abnormal acceleration is the direct result of the disaster. Causes for acceleration such as FDIC audits or poor post-disaster economic conditions alone are not sufficient justification
- ◆ The amount of eligibility is limited to two times the average previous reduction of the debt. The AAD/LP must approve this recommendation.

Appendix 20 (Continued)

- ◆ The eligibility may be raised to three times the average previous reduction of debt, however the AD or Deputy must approve this recommendation.
- ◆ When EIDL proceeds are used to reduce accelerated debt, it may be necessary to have the remaining debt restructured to avoid the lender demanding payment in excess of what the borrower can meet.
- ◆ Because the EIDL substantially benefits the lender, it should be willing to restructure the borrower's debt. You must condition the LAA accordingly. If the lender is unwilling to cooperate, it may indicate pre-disaster problems between the applicant and lender, and could result in an inability of the applicant to remain viable.

(4) Extraordinary Items.

You cover extraordinary items that represent current needs in the needs analysis and these require no further support. However, an extraordinary item paid prior to filing the application will not appear in column (f). In addition to the obligations that cannot be met because sales and margins were lower than normal, it is possible additional obligations cannot be met because the limited funds available were used to meet an extraordinary item. Again, instead of the needs being divided between columns (e) and (f) in section V, they all appear in column (e).

Section X.

Phase I analysis ends with the calculation of 2 months lost GM. Phase II analysis ends with the completion of section X3. The final stage of Phase III analysis is the reconciliation of needs and injury, completing the entire section X by comparing remaining essential needs from section V (excepting extraordinary needs in column f) with the total injury measured in section W.

a. Limitations on the Possible Loan Amount (Phase III).

Because a Phase III EIDL cannot exceed the injury incurred, the possible loan amount is the lesser of the needs (from line V.12.(e)), or the Total EI (lost MCM

Appendix 20 (Continued)

from section W.1.b. plus additional EI from section W.2.), plus remaining extraordinary needs from V.12.(f).

b. Calculating the Possible Loan Amount.

- ◆ Transfer the lost MCM amount from section W.1.b. to line X.1.
- ◆ Transfer any additional EI amount from section W.2. to line X.2.
- ◆ Transfer the total of lines X.1. and X.2. to line X.3. (Total EI).
- ◆ Transfer any remaining essential needs from line V.12.(e) to line X.4.
- ◆ Transfer any remaining essential needs from line V.12.(f) to line X.6.

NOTE: The entry on line X.6. is not compared to injury. If the amount on line V.12.(f) includes accelerated debt, transfer only the eligible amount to X.6.

- (6) Compare the remaining essential needs on line X.4. to the total EI on line X.3. If X.3. equals or exceeds X.4., the possible loan amount will be total needs (X.4. plus X.6.).
- (7) If X.4. exceeds the total EI on line X.3., enter the shortfall on line X.5., proceed as follows.
 - (a) Review the components of the analysis for any errors and/or oversights.
 - (b) Review for the possibility of pre-disaster problems and consider if any needs can be addressed through workouts with existing lenders.
 - (c) If the review increases total EI, proceed. The possible loan amount will be the total remaining needs (X.4. plus X.6.). If the excess needs can be addressed through other means (e.g., workouts, etc.), the possible loan amount will be total EI plus remaining extraordinary needs (X.3. plus X.6.).

Appendix 20 (Continued)

- (d) You must explain any shortfalls (from line X.5., from ineligible portions of accelerated debt, or from any other ineligible needs). If the shortfall cannot be met through other means, decline for coded reasons 21 (lack of repayment ability) and 25 (inadequate working capital after the loan).

c. Returning to the CET.

Once you determine a potential loan amount, complete the CET. If the applicant passed both threshold tests and doesn't have credit available elsewhere you should consider loan approval. If the applicant exceeds either threshold, the CET result will generally depend on the losses. In these cases, much of the test is complete and you can finalize the decision. If the CET result is no credit available elsewhere, proceed. If credit is available elsewhere, decline for coded reason 34, or justify a hardship waiver, if appropriate.

d. Proposed Eligible Use of Proceeds.

Complete the box. The use of proceeds should be consistent with the needs identified in section V. You must justify any restrictive or irregular use of proceeds and/or for any special conditions imposed to assure the needs will be met.

e. Disbursement Instructions.

Any special or unusual conditions for disbursement must be explained in the space below the box. You must support any disbursement restrictions by including special conditions in the LAA advising the borrower of the requirements for obtaining disbursement. You must provide any instructions relevant to the timing of disbursement for the legal department.

Section Y.

Use this section of the SBA 1618 for continuation of any comments, explanations or justifications made in previous sections. Entries should clearly reference the particular section of the addendum to which they pertain.

Appendix 21
(paragraph 116 and 117)

SIZE APPENDIX

1. Why a Size Standard?

SBA's size standards define whether a business entity is small and, therefore, eligible for an EIDL. SBA establishes size standards by types of economic activity, or industry, under the Standard Industrial Classification (SIC) System. The Office of Management and Budget publishes the "Standard Industrial Classification Manual" which describes the SIC System. You must use the SIC manual to determine the SIC code applicable to the primary activity of the applicant and of any affiliates.

2. Size Standards for an EIDL Applicant.

13CFR 121.301(a) states: "For Business Loans and Disaster Loans (other than physical disaster loans), an applicant must not exceed the size standard for the industry in which:

- a. The applicant combined with its affiliates is primarily engaged; and
- b. The applicant alone is primarily engaged."

3. Definitions

- a. Single legal entities are concerns that do not have any affiliates.
- b. Affiliates. Concerns are affiliates of each other when, either directly or indirectly:
 - (1) One concern controls or has the power to control the other; or
 - (2) A third party or parties controls or has the power to control both; or
 - (3) An identity of interest between or among parties exists so that affiliation may be found (13 CFR 121.103).
- c. Affiliated group means two or more distinct legal entities which are affiliated.
- d. Primary activity refers to the major business activity of the single legal entity or

Appendix 21 (Continued)

affiliated group which is their predominant field of operation (see subparagraph 6.c. below).

- e. Applicant activity is the major activity of the concern applying for the loan and is relevant only where there is an affiliated group.
- f. Labor Surplus Area Differential. The applicable size standards are increased by 25 percent when the applicant is in a labor surplus area. Labor surplus areas are listed monthly in the Department of Labor publication Area Trends. This information is available in each Area Office.

4. Types of Size Determinations.

- a. Initial size determinations qualify EIDL applicants as small business concerns. You make initial size determinations and an SLO takes final action. You must obtain guidance from legal counsel if issues are unclear or controversial. You must decline the application (code 33) if the determination results in a finding of "other than small" and send an SBA Form 355, "Application for Small Business Size Determination," with our decline letter.
- b. Formal size determination is the reconsideration of an initial size determination. You make formal size determinations based upon information submitted by the applicant on SBA Form 355. We require SLO concurrence and a written concurrence by Area Counsel (or designee), however only the AAD/LP (or higher) takes final action. If this results in a finding of other than small, they must decline the application. Our decline letter must state that the applicant has the right to request a review of the size decision. The applicant must make this request to SBA's Office of Hearings and Appeals (OHA) within 30 days of the formal decline.
- c. The size determination made by the Disaster Area Office is final unless OHA accepts a petition for a review. The procedures for requesting discretionary reviews by OHA are found in 13CFR Part 134.

5. How to Make a Size Determination.

- a. Use the definition of affiliates found in 13CFR 121.103, and identify the applicant as either a single legal entity or as a member of an affiliated group. If the

Appendix 21 (Continued)

applicant is a single legal entity, only one size test is applied. Determine if the single legal entity conducts more than one activity:

- (1) If there is only one activity, the SIC code and the size standard for that industry is applied.
 - (2) If there is more than one activity, the SIC code for the primary activity is determined and applied by measuring annual receipts. Follow the procedures in 13CFR 121.104.
- b. If your review of the assets and sources of income of the applicant and its principals show the existence of other business interests, you must determine whether affiliation exists by considering:
- (1) Common ownership, common management, contractual relationships and nature of control;
 - (2) The applicant concern and all its domestic and foreign affiliates, whether organized for profit or as nonprofit, as potential members of the affiliated group; and
 - (3) The nature of ownership and control. For example:
 - ◆ The 100 percent owner of a closely held corporation also operates another business as a sole proprietorship. In this case, due to common ownership and control, affiliation is obvious.
 - ◆ An applicant partnership has two general partners, both of whom have 10 percent ownership in a corporation. Here the partners have an identity of interest and are viewed as one party having 20 percent ownership in the corporation. Whether that ownership is controlling is dependent on the ownership of the remaining 80 percent, who are the officers, and what are their powers of office. If the remaining 80 percent is held by one person who is also the president, the partners probably do not have control. However, if the remaining 80 percent is divided equally among eight other persons, the partners could have control. The officers, the powers of office, the relationship among the other eight owners, and the relationship among the partners and those eight owners, are all factors in the final determination of control and affiliation.

Appendix 21 (Continued)

- c. Once you identify affiliation, you must determine the primary activity of the affiliated group, using the guidelines in 13CFR 121.104 & 107, as follows:
- (1) Identify the activities of all members of the group by industry;
 - (2) Identify the distribution of gross revenues by group member and industry as follows:
 - ◆ For businesses with a completed fiscal year, use the year prior to the onset of the disaster; and
 - ◆ For businesses without a completed fiscal year, divide gross receipts from inception to the onset of the disaster by the number of weeks in operation and multiply the weekly average by 52.
 - (3) The activity which generates the largest distribution of gross revenues determines the primary activity of the affiliated group and also determines the applicable size standard.

NOTE: In rare cases the regulations allow us to consider the number of employees, distribution of assets, contract awards and other factors when determining the primary activity.

6. How to Apply the Size Standard

Once you have identified the primary activity of the affiliated group, you must calculate the average annual receipts (AAR), or the average number of employees, of the applicant, including its affiliated group, and of the applicant, not including its affiliates. You must make these calculations and comparisons using the procedures detailed in 13CFR 121.104, 106 & 201:

- a. If the size standard for the SIC code of the primary activity is expressed in AAR, you must use the procedures in 13CFR 121.104;
- b. If the size standard for the SIC code of the primary activity is expressed in average number of employees, you must use the procedures in 13CFR 121.106;

Appendix 21 (Continued)

- c. You must use the procedures in 13CFR 121.201, 301(a) & 302(c) in comparing the results of your calculations to the applicable size standard for the primary activity of the applicant, including its affiliated group, and for the applicant, not including its affiliates:
- (1) If the applicant, including the affiliated group, is small, you must then determine if the applicant activity is small;
 - (2) If the applicant activity is also small, the two fold size standard test is met; and
 - (3) If either the applicant, including its affiliated group, or the applicant alone is "other than small," you must decline the EIDL application due to size (decline code 33).

APPENDIX 22
(paragraph 76)

RIGHT TO FINANCIAL PRIVACY

1. CREDIT INQUIRY LETTER

We must add the following paragraph to any credit inquiry letter (see appendix 9) whenever we mail it to a financial institution and the application includes an executed consent form:

"This is to certify that the Small Business Administration has complied with the applicable provisions of the Right to Financial Privacy Act of 1978, Title XI of Public Law 95-360. Pursuant to Section 1113(h)(2) of that Act, no further certification shall be required for subsequent access by the Small Business Administration to financial records of the customer."

2. RIGHT TO FINANCIAL PRIVACY ACT OF 1978

a. General.

Congress passed this Act (effective date May 10, 1979) to protect individuals from any unwarranted intrusions into their financial affairs by Government authorities. We must notify certain applicants and their principals that we have the right to access financial records and information necessary to process, service or foreclose a loan or loan guaranty. SBA disaster loan applications are designed to provide appropriate notice to the applicant and principals as required by the Act. Observance to this paragraph is necessary to protect financial institutions from liability when they furnish financial information.

Do not confuse this Act with the Privacy Act of 1974. They are two separate and distinct pieces of legislation.

b. Definitions.

Terms used in the Act have the following special meanings.

- (1) Customer/Individual means a natural person, a proprietorship, a partnership of five or fewer partners, or a corporate officer, director, or shareholder in his/her individual capacity.

Appendix 22 (Continued)

- (2) Financial Institutions mean participating banks, banks of account, creditorbanks, savings and loan associations, credit unions, credit card issuers and production credit associations (PCAs). We don't consider credit bureaus, insurance companies, suppliers, or retailers as sources of financial records or financial institutions.
- (3) Financial Records mean the actual records or copies of the records in a financial institution; a compilation, summary, or report derived from records; the actual records submitted for review or a written or verbal opinion resulting from the records.
- (4) Notice means the statement required by the Act given to all appropriate individuals associated with all applications.
- (5) Certify or Certification means the statement SBA must make in requesting information from a financial institution to the effect that the request complies with this Act. A single certification will be sufficient for the term of the loan or loan guaranty with regard to a specific customer.

c. Exclusions.

The Act specifically excepts or excludes (or is silent on) certain exchanges of information from the provisions of this legislation.

- (1) Financial records of corporations are not included. However, financial records of corporate officers, shareholders, and directors as individuals are included.
- (2) Financial records of partnerships having six or more partners are excluded (but not the information concerning the partners as individuals).
- (3) Personal financial information supplied by the individuals directly to SBA is not covered. Requests for financial institutions to verify any such information are covered.
- (4) Information received from nonfinancial institutions is excluded.
- (5) Exchange of information between financial institutions is not covered.

Appendix 22 (Continued)

d. Implementation.

A copy of "Statements Required by Laws" is attached (in tear-off fashion) to every application issued. The applicant must read and retain this. Do not accept an application for processing if the tear-off is still attached. If this occurs, detach and return it to the applicant (see paragraph 69). In addition to the Financial Privacy Act of 1978, this document provides required notice of other legislation.

Telephone verification of financial information on individuals involved in any way with a loan application is considered an exchange of information and must be preceded by written certification.

The law regarding the exchange of credit information between SBA and IRS or any other Federal authority is complex. Therefore, you must refer all exchanges to area counsel.

APPENDIX 23
(paragraph 75)

OPINION OF GENERAL COUNSEL

EQUAL CREDIT OPPORTUNITY ACT IN COMMUNITY PROPERTY STATES

DATE: July 25, 1994

TO: Bernard Kulik
Associate Administrator for
Disaster Assistance

FROM: Martin D. Teckler
Deputy General Counsel

SUBJ: Equal Credit Opportunity Act and Community Property States

This is in response to your request of July 12, 1994 for our views with respect to the application of the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. 1601 et seq., in community property states, such as California. You advise that one of the Disaster Area Offices of the Small Business Administration (“SBA”) requires spouses in a community property state to be co-borrowers on a disaster loan even if only one of the individuals actually applied for disaster assistance.¹ (**view the footnote**) In our opinion, this is inconsistent with ECOA, and we note the following.

To implement ECOA, the Federal Reserve Board (“Board”) has promulgated regulations in 12 CFR Part 202 (“Regulation B”) which have equal applicability in community and non-community property states. We have also considered the Board’s Official Staff Commentary on Regulation B (“Commentary”). Under Section 202.8 of Regulation B, a creditor in a special purpose credit program (which includes SBA disaster financing) may obtain the signature of an

¹ California law makes one spouse personally liable only for the “necessaries” debts incurred by the other spouse. (Case law in California has defined “necessaries” as that required to sustain life). See section 914 of the California Family Code which provides that a married person is personally liable for a debt incurred by the spouse during marriage if incurred for the necessities of life. Section 910 provides that the community property is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt. Section 913 provides that the separate property of a married person is not liable for a debt incurred by the person’s spouse before or during marriage.

applicant's spouse or other person on an application or credit instrument (i.e., note) if the signature is required by federal or state law. We are not aware of a federal or state law which requires the applicant's spouse to sign the application or note relating to SBA disaster assistance. Section 202.7(d) of Regulation B prohibits a creditor from requiring the signature of the applicant's spouse or other person other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested. We note the commentary on Section 202.7 of Regulation B:

“An applicant who requests individual credit relying on the income of another person (including a spouse in a noncommunity property state) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature of a spouse may be required if the applicant relies on the spouse's separate income. If the applicant relies on the spouse's future earnings that as a matter of state law cannot be characterized as community property until earned, the creditor may require the spouse's signature, but need not do so...”

With respect to unsecured credit, if an applicant is relying upon community property not under the applicant's control (or is relying on the spouse's separate property), the creditor may require the spouse's signature on any documents required under state law to make the property available in case of default. If the applicant has control over sufficient community or separate property to meet the creditor's standards of creditworthiness, the creditor can not require the spouse or any other person to sign any credit instrument. With respect to secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the collateral available to satisfy the debt in the event of default, such as an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings. With minor exception, SOP 50 30, Appendix 23, incorporates these rules.

1. In your first example, the husband applies for disaster loan assistance, and the spouse does not sign the loan application. Damaged property is jointly owned by the spouses. The SBA loan officer bases repayment ability solely on the husband's income and approves a disaster loan. Can SBA automatically require the spouse to be a co-borrower on this loan?

Answer. No. If the husband's singular application supports the financing, the spouse cannot be asked to sign the application or the note. However, the spouse can be asked to sign any of the

Appendix 23

collateral documents to ensure that SBA obtains a valid lien on the collateralized property or to pass clear title in the event of default by the husband.

2. The wife applies for a disaster loan for rental property she owned prior to her marriage. The spouse does not sign the disaster loan application. The loan is approved on the wife's repayment ability. Should SBA automatically require the spouse to be a co-borrower on the loan?

Answer. No. If the wife's credit supports the loan assistance, SBA cannot require the spouse to sign the note. The marital relationship, by itself, does not authorize a creditor to require both spouses to be jointly and severally liable on a debt instrument.

3. The husband applies for disaster loan assistance, and the spouse does not sign the loan application. The SBA loan officer bases the applicant's repayment ability on the husband's reported income and denies the loan for lack of repayment ability. However, if the spouse's income had been considered the loan would have been approved. Can SBA require the spouse to be a co-borrower?

Answer. No. It is up to the applicant to decide whether the spouse or another person will be a cosigner or a guarantor. In the decline letter, you can inform the applicant that the applicant's resources alone do not support the grant of financial assistance by SBA, but it is up to the applicant and spouse to provide you with the spouse's offer to sign the note.

In your memorandum, you add additional inquiries. In joint ownership cases, can SBA automatically require the spouse to be a co-borrower? No. Does this interpretation apply to both home and business disaster loans? Yes. If an applicant does not meet the lender's standards of creditworthiness and the personal liability of another party is necessary, the lender may ask the applicant to obtain a cosigner or guarantor, but cannot require that it be the spouse. If husband and wife voluntarily make a joint application, you may require both to sign the note and other credit instruments.

To assist your Disaster Area Offices, enclosed are several copies of a pamphlet, "Signature Rules in Community Property States: Regulation B", prepared and issued by the Board.

Enclosure

Appendix 23

Appendix 23 (Continued)

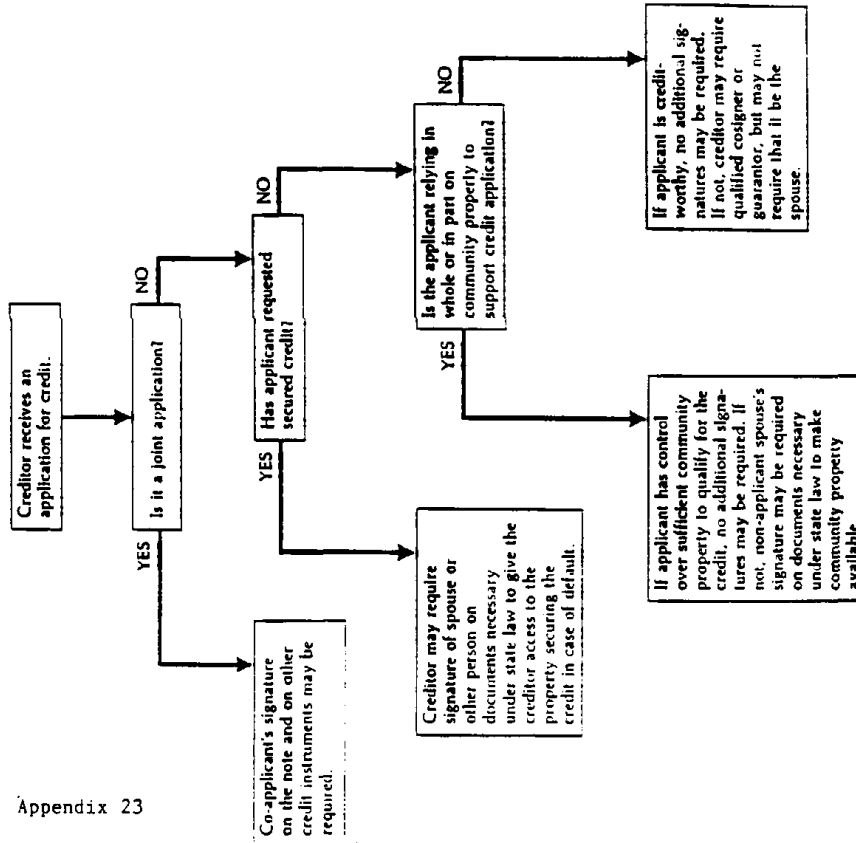
Signature Rules in Community Property States: Regulation B

To help ensure the equitable treatment of all applicants in credit transactions, the Equal Credit Opportunity Act and Regulation B prohibit creditors from routinely requiring that an applicant's spouse (or anyone other than an applicant or joint applicant) sign a promissory note or other debt instrument when the applicant is creditworthy in his or her own right. The regulation has special rules that apply to credit applicants who reside in community property states or who are relying on property located in such states. (The community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Washington, Wisconsin, and Texas.) This pamphlet can help you understand those rules.



Prepared and distributed by the Federal Reserve System

Signature Requirements for Community Property States



FRB-1-3000-1290

Rules Applicable to B...

Secured and Unsecured Credit

If an applicant does not meet your standards of creditworthiness and the personal liability of another party is necessary, you may ask the applicant to obtain a cosigner or guarantor. Although the applicant may choose the spouse to sign, you cannot require that it be the spouse.

In a business credit transaction, if a guarantor is required, these same signature rules apply; for example, you may not routinely require that the guarantor's spouse join in the guarantee.

If two applicants voluntarily make a joint application, you may require both to sign the note and other credit instruments.

For Further Information

The following chart summarizes the rules discussed above. For further information contact your primary federal regulator.

default. On the other hand, if the applicant has control over the community or separate property, then you must meet your standards of creditworthiness, then you must not require the applicant's spouse or any other person to sign any credit instrument.

Rules for Secured Credit

In a secured credit transaction, if the applicant is creditworthy, you may not require any person other than the applicant to sign the promissory note. However, Regulation B permits you to obtain the signature of the applicant's spouse (or any other person) on a mortgage or other security agreement if state law requires that signature to create a valid lien on the property offered as security.

If you are entitled to a non-applicant's signature on a security document, and you use a combination debt-and-security instrument, the document must either—

- state that the non-applicant's signature functions only to create a valid security interest or to make property available in case of default, or
- segregate the security agreement from the note to make clear that the non-applicant is signing only to give a security interest rather than to undertake a credit obligation.

The Two General Principles

Two general principles apply throughout Regulation B's signature requirements.

First, you may not require a signature other than the applicant's on the note or similar debt instrument if the applicant applies for individual credit and qualifies under your standards for the amount and terms of the credit requested.

Second, you have more latitude in asking for signatures on security documents required by your state law in order for you to reach property used as collateral (for example, jointly-owned real estate). To understand the general rules, you must distinguish between debt instruments and security documents.

A debt instrument, such as a promissory note, is a legally binding admission that a debt exists. Each signer is personally liable for the debt.

A security document, such as a mortgage or security agreement, creates a more limited obligation—one that allows the lender to reach the signer's interest in property used as collateral, in the event of a default. After default and the sale of the property, if an amount remains due to the creditor, a person who has signed only a security agreement is not obligated to pay the deficiency.

Special Signature Rules in Community Property States

Rules for Unsecured Credit

If an applicant for unsecured credit is relying upon community property not under the applicant's control (or is relying on the spouse's separate property), then you may require the spouse's signature on any documents required by your state law to make the property available in case of

APPENDIX 24
(paragraph 46)

CREDIT ELSEWHERE GUIDELINES FOR DISASTER HOME LOANS

(Including instructions for completion of the Home CET)

1. GENERAL

- a. Statutory Basis. The Small Business Act requires us to determine if credit is available elsewhere before we assign an interest rate. If we determine the requested financial assistance is available at reasonable rates and terms from nongovernment sources, the higher interest rate applies.
- b. Flexibility. We do not intend these guidelines to be all inclusive or inflexible. We make a judgement after considering relevant factors. Our experience is that in most cases the low rate will apply.
- c. Two Tests. We must apply two separate tests to make a credit elsewhere determination. One test analyzes available cash flow to determine cash available for debt servicing. The other measures the applicant's ability to utilize available assets to overcome the disaster damage. If either test determines that credit is available elsewhere, that result is controlling.
- d. Benchmark rates. These are factors representing the prevailing rates in the commercial market. We use benchmark rates to determine the hypothetical payment required to service a private sector loan to repair damages. ODA establishes these rates every April and October, and they remain in effect for 6 months. If the source rates change by more than two percentage points, ODA will issue a revision. You must use the benchmark rates in effect at the time of processing, regardless of the date of the disaster.

2. CASH FLOW (CF) TEST (SECTION Q)

The CF test determines if applicants have sufficient cash flow to borrow private sector funds to repair/replace uncompensated disaster damages without incurring undue hardship. You must complete section Q-1 or Q-2.

Appendix 24 (Continued)

Section Q-1 assumes that below a certain income level applicants don't have CE. That level is the GS 12/10 basic RUS pay rate.

If GAI (section H) does not exceed \$ (enter the GS 12/10 basic RUS pay rate), check box "1" and go to section R. Otherwise, check box "2" and complete section Q.

Section Q-2 compares the SBA target payment to the total payment at benchmark rates. The "target payment" is always the 1/3 CA figure you calculated in the standard 36 or 40 percent MAFD column of section J. The "total payment at benchmark rates" is the combined benchmark payments of the uncompensated losses to PP and R/E. You estimate this by amortizing all uncompensated losses at benchmark rates.

- a. Uncompensated Physical Loss (PP). Enter the uncompensated physical loss to PP from section A1. Next, enter the PP benchmark rate for a 3-year term. Multiply the uncompensated loss times the rate. Enter the result to the right.
- b. Uncompensated Physical Loss (R/E). Enter the uncompensated physical loss to R/E from section A1. Next, enter the R/E benchmark rate for a 15-year term. Multiply the uncompensated loss times the rate. Enter the result to the right.
- c. If the target payment is less than or equal to the total payment at benchmark rates, the applicant doesn't have credit available elsewhere. Check box "c" and go to section R.
- d. If the target payment is greater than the total payment at benchmark rates, the applicant has credit available elsewhere. Check box "d" and proceed according to the "yes" or "no" box concerning hardship waiver.

NOTE: For 1-4 Rentals processed under the FDM, you base the total payment at benchmark rates on the total uncompensated loss to all types of property at the business benchmark rate for a term of 3 years.

For home and sole proprietor companion files from the same disaster, you combine the individual benchmark payments for the uncompensated home and business losses to determine the total payment at benchmark rates.

Appendix 24 (Continued)

3. OTHER ASSETS (OA) TEST (SECTION R)

The OA test determines if applicants have other assets they can use to alleviate the effects of the disaster without undue hardship. You must complete section R-1 or R-2.

Section R-1 assumes that below a certain dollar level of assets, applicants don't have CE. That level is \$244,000, excluding the primary residence.

R-1. If the applicant's estimated total gross assets (Section D, SBA 5C), less the primary residence, is less than or equal to \$244,000, check box "1" and go to section S. Otherwise, check box "2" and complete section R as follows.

Section R-2. You must exclude the following assets and associated liens:

- ◆ Primary residence;
- ◆ Ordinary household furnishings, clothing, vehicles, and similar personal property of the kind which could normally be replaced with SBA disaster funds;
- ◆ Retirement accounts which cannot be withdrawn without substantial tax penalties (such as IRAs, Keoghs, etc.);
- ◆ Cash surrender value of life insurance; and
- ◆ Any other asset encumbered 50 percent or more by a lien specific to that asset.

R-2.

1. List the other assets.
2. List their fair market value in the FMV column and total. If any value appears to be out of line or unreasonable, you should require supporting documentation.
3. List associated liens in the PRIOR LIENS column and total. You must include unsecured debt, credit card balances, signature notes, personal loans, etc., as prior liens against cash/CDS/savings.
4. Subtract prior liens from FMV to arrive at "Total Other Assets Net Current Value."

Appendix 24 (Continued)

- (a) If negative or zero, section R is complete. Go to section S.
 - (b) If positive, continue.
5. Subtract any "Uncompensated Physical Loss Above Eligibility" (previously entered in section A.3.a. of SBA 140) from total other assets net current value. The remainder is "Net Available Assets."
- (a) If negative or zero, section R is complete. Go to section S.
 - (b) If positive, continue as follows.
6. Enter the SBA eligible physical loss amount (from A.3.b.) and multiply by 150 percent. Subtract this amount from the net available assets. Check "Negative Remainder" or "Positive Remainder."
7. Proceed to section S.
4. HARDSHIP WAIVER (SECTION S)

This applies to situations where the CET indicates high rate, but assigning the high rate would cause financial hardship. This can occur because the CET does not recognize certain factors which may result in an inaccurate indication of credit available elsewhere. You determine hardship waivers on a case-by-case basis.

- a. Quick Justifications. You must use the quick justification codes when applicable. This avoids writing lengthy hardship waivers. You may only use the ones authorized in this paragraph if the prerequisite applies. You must also make any necessary adjustments to the repayment analysis before you consider using a quick justification.

- (1) Cash Flow Test.

Prerequisite. The applicant's GAI must be less than the EX 3 pay level.

CF-1. Uninsured, uncompensated physical loss exceeds 25 percent of GAI.

CF-2. Applicant is retired.

Appendix 24 (Continued)

CF-3. Applicant's family/household size is large relative to income (e.g., at least one family/household member for each \$10,000 of GAI).

CF-4. Applicant is expecting an imminent reduction in income (e.g., one working spouse is planning to leave their job; retirement is approaching; etc.).

NOTE: You must use the future reduced income in the repayment analysis.

CF-5. Applicant's income is unstable or fluctuates substantially due to business or economic conditions (e.g., actor employed sporadically; commission salesperson; etc.).

NOTE: You must use the fluctuating nature or instability of income in the repayment analysis.

CF-6. Rental income is substantial, but rental tenancy is unpredictable, especially in a market area with depressed economic conditions.

NOTE: You must consider the unpredictable tenancy in the repayment analysis.

Most hardship waivers applicable to the CF test are listed above. However, in some cases the facts or the prerequisite may prevent using them. Two other situations which can warrant a CF hardship waiver are when:

- ◆ The amount that the one-third CA exceeds the total payment at benchmark rates is insignificant and the applicant has suffered a sizeable uninsured loss.
- ◆ The GAI is less than \$85,000 and there is no accumulation of assets.

(2) Other Assets Test.

Prerequisite. The applicant's GAI must be less than the EX 3 pay level and the total gross assets (less primary residence) must be less than \$500,000.

Appendix 24 (Continued)

OA-1. Other Assets Are Not Readily Marketable Or Liquid.

We will not require applicants to dispose of any assets. We don't measure credit elsewhere by what can be sold, but by what the applicant can pledge for private sector financing.

For CET purposes, the phrase not readily marketable or liquid means:

- ◆ Due to their nature, the assets are not suitable for private sector borrowing; or
- ◆ Such borrowing is not available on reasonable commercial rates and terms.

Assets we consider not readily marketable or liquid generally include:

- ◆ Unimproved real estate;
- ◆ Unlisted (not traded) securities, such as stock in a closely held corporation; and
- ◆ Collections of unique items, such as coins and stamps, baseball trading cards, artwork, comic books, etc.

NOTE: You can't ignore assets in this category with an aggregate FMV more than \$100,000. You must consider the overall asset base when making the final determination.

Conversely, the following are examples of assets which are readily marketable or liquid:

- ◆ Improved real estate;
- ◆ Listed (traded) securities;
- ◆ CDs and cash; and
- ◆ Tangible business assets, etc.

Appendix 24 (Continued)

NOTE: To classify improved real estate not readily marketable because it is located "in an area with a severely depressed real estate market," requires additional written justification. You must cite specific information regarding the real estate market in that community, including the prevailing attitude of commercial lenders as a whole and recent real estate trends in the area. Improved real property owned free and clear or minimally encumbered generally is not considered illiquid.

OA-2. Other Assets Are A Significant Source Of Income.

This waiver may be appropriate if:

- ◆ The applicant is on low and/or fixed income; and
- ◆ The assets generate a significant portion of total income. Significant portion of total income means: when compared to all other sources and amounts of income, the assets generate such a major component of the total that hardship would exist if pledged for private sector financing, thus impairing the applicant's ability to service all obligations.

NOTE: We use this waiver most often when the other assets consist predominantly or entirely of rental property. However, if the rental property has a true negative cash flow, or is not producing a significant portion of income as defined above, you can't use OA-2. It must be relevant to the applicant's overall financial condition.

OA-3. Other Assets Are Already Heavily Encumbered.

Although you exclude any asset encumbered 50 percent or more by a specific lien, OA-3 could apply to property less than 50 percent encumbered. In those cases, you must consider:

- ◆ The property's FMV;
- ◆ The source of the FMV;

Appendix 24 (Continued)

- ◆ The use of the property;
- ◆ The amount of encumbrance; and
- ◆ The number of liens.

For example, assume the other assets consist of a single family rental property which has an FMV (per SBA) of \$80,000. There is a first mortgage balance of \$25,000 and a second mortgage balance of \$10,000. The property is 44 percent encumbered. OA-3 may be appropriate because it is highly unlikely the private sector would consent to a third lien position at reasonable rates and terms.

Conversely, assume the other assets consist of a commercial building with an FMV (per SBA) of \$1.0 MM, with a first mortgage balance of \$440,000. The property is 44 percent encumbered. Private sector financing may be possible and you can't use OA-3 without further research.

OA-4. Other Assets Are Required Reserves For Applicant's Business.

You must specify how the required reserves relate to the business. You can't use OA-4 without this connection.

For example, the applicant is a sole proprietor who owns a toy store. We receive the application in January, and it indicates significant cash on hand. We determine the large amount of cash is simply last month's receipts earmarked to pay accounts payable and purchase inventory. You may use OA-4 in this instance because the appropriate connection is stated.

b. Possible (Non-Quick) Reasons For Other Asset Hardship Waivers.

Other possible justifications for OA hardship waivers may apply but cannot be covered by a quick code selection. For example:

- (1) The applicant may not have full control of the assets (those belonging to a business of which the applicant is a non-controlling principal); or
- (2) The assets may comprise specialized use facilities (e.g., custom-use properties like roller-skating rinks or bowling alleys, etc.) which limit their collateral values or marketability.

Appendix 24 (Continued)

In these cases or where the prerequisite can't be met but the basis for the quick justification is applicable, you must state the actual reason and support its usage.

c. Nonapplicable Hardship Waivers.

You can't base a hardship waiver upon:

- (1) Pending college tuition. (Addressed as a living expense item in the FDM.)
- (2) Speculative increase of living expenses or family size. (These are unknown factors which may change over time. The FDM addresses these changes.)
- (3) Uncompensated losses in excess of physical loan eligibility. (We consider this in the other assets test.)

d. Final Rate. You must check the final rate box in the lower right corner. This is your conclusion of the CET even if it differs from the actual result.

5. LOAN OFFICER'S DISCRETION

These are guidelines to aid you in determining which interest rate applies. You may need to use your discretion if you encounter extenuating circumstances. You must always document the basis for your decisions.

APPENDIX 25
(paragraph 46)

CREDIT ELSEWHERE GUIDELINES FOR DISASTER BUSINESS LOANS

(Including instructions for completion of the Business CET)

1. GENERAL

- a. Statutory Basis. The Small Business Act requires us to determine if credit is available elsewhere before we specify an interest rate for a physical disaster business loan. If we determine the requested financial assistance is available at reasonable rates and terms from nongovernment sources, the higher interest rate and a maximum 3-year term apply. EIDL applicants with credit available elsewhere are ineligible.
- b. Nonprofits. The credit elsewhere determination also applies to nonprofit organizations. However, nonprofit organizations with credit elsewhere are not subject to the maximum 3-year term.
- c. Flexibility. We do not intend these guidelines to be all inclusive or inflexible. We make a judgment after considering the relevant factors. Our experience is that in most cases the lower rate will apply.
- d. Two Tests. We must apply two separate tests to make a credit elsewhere determination. One test analyzes cash flow to determine cash available for debt servicing. The other measures the applicant's ability to utilize available assets to overcome the disaster damage. These tests also encompass certain affiliates (corporate parents, subsidiaries, etc.) and principals. If either test determines that credit is available elsewhere, that result is controlling.
- e. Definitions. These definitions apply only to this appendix and the business credit elsewhere test. They don't apply to affiliation for size or other purposes.
 - (1) Applicant means the legal entity applying for the loan (includes sole proprietors).
 - (2) Parent means any business that owns more than 50 percent of the applicant's equity (and of the equity of an intermediate business, if any).

Appendix 25 (Continued)

- (3) Affiliate means any entity over 50 percent owned or controlled by the applicant or its principals.
- (4) Subsidiary means any business in which the applicant owns more than 50 percent of the equity (and of the equity of an intermediate business, if any).
- (5) Principal means:
 - (a) For general partnerships, each general partner;
 - (b) For limited partnerships, each general partner and each limited partner who owns 20 percent or more interest in the applicant; and
 - (c) For corporations, each stockholder who owns 20 percent or more of the applicant's voting stock.

NOTE: In some cases, you must consider certain parties even if any one or all of them owns less than 20 percent. You must do this if two or more persons have an identity of interest, such as members of the same family or persons with common investments in more than one concern, and:

- ◆ Collectively own 20 percent or more of the concern; or
- ◆ Otherwise control the business (e.g., voting control, management control, etc.).

2. BUSINESS CET PRINCIPLES

- a. CET Cash Flow. You generally base the cash flow test on financial information for the fiscal year immediately preceding the year the disaster occurred. Therefore, the Cash Available to Service Additional Debt (CASAD) you use in the CET may differ from the CASAD used for repayment purposes. You must not include any negative CASAD from principals, affiliates, or subsidiaries.
- b. Adjusted Net Assets (ANA) means post-disaster fair market value of tangible assets, less total liabilities, subject to the following:

Appendix 25 (Continued)

- (1) You must deduct the uncompensated loss to R/E from the pre-disaster FMV to arrive at tangible, post-disaster FMV;
 - (2) You must deduct the uncompensated loss to tangible assets (M&E, F/F, inventory, etc.) from the pre-disaster FMV to arrive at post-disaster FMV. Tangible assets can include patents, licenses, etc.;
 - (3) You don't include intangible assets, such as goodwill, unamortized loan costs, etc., in the ANA calculation; and
 - (4) You must find out how assets were valued and consult with LV if any value appears unusually low or high.
- c. Exclusions from Sole Proprietorships or Principal's ANA Calculation. You must exclude the following assets and associated liens for sole proprietorships and Principals:
- (1) Ordinary household furnishings, clothing, personal vehicles, and similar personal property;
 - (2) Retirement accounts which cannot be withdrawn without substantial tax penalties (IRAs, Keoghs, etc.);
 - (3) Cash surrender value of life insurance;
 - (4) Any other asset encumbered 50 percent or more by a lien specific to that asset; and
 - (5) Value of applicant business if shown on personal financial statement of principal(s).

NOTE: For Principals, these exclusions are made before applying the \$375,000 threshold. The \$375,000 threshold is not applicable to sole proprietors because they are considered the "applicant," rather than the "principal," for CET purposes.

3. INSTRUCTIONS FOR COMPLETION OF BUSINESS CET

Part I - Cash Flow Test.

Appendix 25

Appendix 25 (Continued)

- a. Enter CASAD - applicant. Generally, you obtain this from section L.1.(a) of the LOR. However, if you used a forecast for repayment ability CASAD, you still use the pre-disaster CASAD in the CET.
- b. Enter CASAD - affiliate/subsidiary from section L.1.(b). Enter zero for each entity where affiliation is 50 percent or less.
- c. Enter CASAD - principals from section L.1.(b). If any principal's GAI is less than \$100,000, enter zero for that principal. For principals with GAI of \$100,000 or more, apply the FDM, multiply CA by 12 and then by their percentage of ownership.

NOTE: Sole proprietors are considered to be the "applicant," rather than the "principal," for CET purposes.

- d. Enter TOTAL CASAD by adding a., b., and c.

If 3 times total CASAD is less than the combined uncompensated physical and EIDL loss, go to Part II. Otherwise, apply the higher rate (unless a hardship waiver may be appropriate).

Part II - Available Assets Test.

- a. Adjusted Net Assets - Applicant. Enter the applicant's ANA.
- b. Adjusted Net Assets - Affiliate/Subsidiary. Enter zero for each entity where affiliation is 50 percent or less.
- c. Adjusted Net Assets - Principals. Enter zero for each principal whose ANA is less than \$375,000. For principals whose ANA is more than \$375,000, enter the amount more than \$375,000 times their percentage of ownership.

NOTE: Sole proprietors are considered to be the "applicant," rather than the "principal," for CET purposes.

- d. Enter Total ANA by adding a., b., and c.

Check "yes" or "no" and proceed.

Appendix 25 (Continued)

CET Conclusion. Check one box only.

4. HARDSHIP WAIVERS

This applies to situations where the CET indicates high rate, but issuing that rate would cause undue financial hardship. This can occur because the CET does not recognize certain factors which may result in an inaccurate indication of credit available elsewhere. You determine hardship waivers on a case-by-case basis.

- a. Acceptable Hardship Waivers - Cash Flow Test. Hardship waivers based upon the CF Test should be rare. However, you can recommend a waiver if:

- (1) Total CASAD is unusually high (e.g., through the sale of assets or an injection of cash); and
- (2) This is not likely to recur.

- b. Acceptable Hardship Waivers - Available Assets Test. We will not require applicants to dispose of any assets. We don't measure credit elsewhere by what can be sold, but by what the applicant, principals and affiliates can pledge for private sector financing.

- (1) Available Assets Which Are Not Readily Marketable Or Liquid.

For CET purposes, the phrase not readily marketable or liquid means:

- (a) Due to their nature, the assets are not suitable for private sector borrowing; or
- (b) Such borrowing is not available on reasonable commercial rates and terms.

NOTE: To classify improved real estate as not readily marketable because it is located "in an area with a severely depressed real estate market," requires additional written justification. You must cite specific information regarding the real estate market in that community, including the prevailing attitude of commercial lenders as a whole and recent real estate trends in the area. Improved real property owned free and clear or minimally encumbered generally is not considered illiquid.

Appendix 25 (Continued)

(2) Available Assets Which Are Already Heavily Encumbered.

Although you exclude any asset encumbered 50 percent or more by a specific lien, this waiver could apply to assets less than 50 percent encumbered. In those cases, you must consider:

- (a) The property's FMV;
- (b) The source of the FMV;
- (c) The use of the property;
- (d) The amount of encumbrance;
- (e) The number of liens.

For example, assume the available assets consist of a single family rental property which has an FMV (per SBA) of \$80,000. There is a first mortgage balance of \$25,000 and a second mortgage balance of \$10,000. The property is 44 percent encumbered. This waiver may be appropriate because it is highly unlikely the private sector would consent to a third lien position at reasonable rates and terms.

Conversely, assume the available assets consist of a commercial building with an FMV (per SBA) of \$1.0 MM, with a first mortgage balance of \$440,000. The property is 44 percent encumbered. Because private sector financing is highly probable given the lien structure and equity, you can't use this waiver without further research.

(3) Available Assets Which Are Required Reserves.

You must specify how the required reserves relate to the applicant, its affiliates, or the principals.

Appendix 25 (Continued)

(4) Available Assets Which Are Specialized Use Facilities.

You may use this waiver if the available assets have such restricted usage that only certain lenders (if any) offer private sector financing. For example, if the available assets consist of specialized tool and die molds designed for specific usage, they may not be suitable for private sector financing on reasonable rates and terms within the disaster area.

5. LOAN OFFICER'S DISCRETION

These are guidelines to aid you in determining which interest rate applies. You may need to use your discretion if you encounter extenuating circumstances. You must always fully document the basis for your decisions.

Appendix 25 (Continued)

SECTION S - CREDIT ELSEWHERE TESTPart I - Cash Flow (CF) Test

- a. CASAD - Applicant/Sole Proprietor \$_____
- b. CASAD - Affiliate or Subsidiary(ies)** _____
 ** If 50% or less ownership, enter zero
- c. CASAD - Principal(s)** _____
 ** If Principal's GAI < 100,000, enter zero.
 ** If Principal's GAI > 100,000, apply FDM, multiply
 CA x 12 x percent of ownership. _____
- d. TOTAL CASAD (a+b+c) \$_____

IS 3 x TOTAL CASAD LESS THAN THE COMBINED UNCOMPENSATED
 PHYSICAL AND EIDL LOSS?

YES. Applicant does not have CE based upon the CF Test. Go to Part II.

NO. Applicant has CE based upon the CF Test. Apply the higher interest rate, or, if a
 hardship waiver may be appropriate, complete Part II.

Part II - Available Assets (AA) Test

"Adjusted Net Assets" (ANA) means post-disaster Fair Market Value of tangible assets, less
 liabilities.

- a. Adjusted Net Assets - Applicant/Sole proprietor \$_____
- b. Adjusted Net Assets - Affiliate or Subsidiary(ies)** _____
 ** If 50% or less ownership, enter zero
- c. Adjusted (Outside) Net Assets - Principal(s)** _____
 ** If Principal's ANA < \$375,000, enter zero.
 ** If Principal's ANA > \$375,000, multiply amount
 in excess of \$375,000 x percent of ownership. _____
- d. TOTAL Adjusted Net Assets (a+b+c) \$_____

Appendix 25 (Continued)

IS TOTAL ANA LESS THAN \$750,000?

YES. Applicant does not have CE based upon the AA Test. Proceed to conclusion.

NO. Proceed.

IS TOTAL ANA LESS THAN 2 x THE COMBINED UNCOMPENSATED
PHYSICAL AND EIDL LOSS?

YES. Applicant does not have CE based upon the AA Test. Proceed to conclusion.

NO. Applicant has CE based upon the AA Test. Proceed to conclusion.

CET Conclusion:

BOTH TESTS RESULT IN NCE. LOW RATE APPLIES.

TEST RESULTS DIFFER. HIGHER RATE APPLIES.

TESTS RESULTS DIFFER. SEE HARDSHIP WAIVER.

BOTH TESTS RESULT IN CE. HIGHER RATE APPLIES. (Hardship waiver in this
instance may only be approved by AAD/LP or designee).

Hardship Waiver. _____

Hardship Waiver Approval

Printed Name of Approving Official

Title

Signature

Date

APPENDIX 26
(paragraph 84)

THE FIXED DEBT METHOD (FDM):

DOCUMENTING INCOME AND DETERMINING REPAYMENT ABILITY

FOR DISASTER HOME LOANS

1. GENERAL

You must follow the guidelines in this appendix to document income, determine repayment ability and set loan terms. However, these guidelines permit flexibility based upon your judgment and discretion.

2. DOCUMENTING REPAYMENT ABILITY

a. Continuance Of Income (Cash Flow).

You base repayment ability on continuing income. You must examine the applicant's occupation, opportunity for future advancement, education, professional (occupational) training, length of employment, etc., and apply the following.

- (1) You can't consider age when determining repayment ability. However, you must consider future income reductions if applicants are approaching retirement.
- (2) You may consider part-time employment (e.g., a worker for various temporary employment agencies) as continuing income if it occurs year after year at similar levels.
- (3) You may consider seasonal employment (e.g., construction, oil fields, etc.) as continuing income if applicants work full-time (on a seasonal basis) with the same or various employers. You may consider unemployment compensation as continuing income if it is received in conjunction with seasonal employment.

b. Sources of Income.

- (1) Salaries and Wage Income.

Appendix 26 (Continued)

All applicants give us permission to obtain their FTR data directly from IRS (using an IRS 8821). This is our primary source of income documentation.

NOTE: In areas that don't use FTRs, such as commonwealths, territories, or U.S. possessions, we require comparable documentation.

(2) Change of Employment.

Applicants who changed employment within the last 2 years must submit a copy of a current paystub (dated within 1 month of the application date). You must review the paystub and contact the employer if you have questions.

(3) Reconciliation of Income to Application.

Financial information reported on the application should be consistent with FTRs or other verified sources. If there is a discrepancy more than \$500 annually between the reported and verified income, you must determine the correct amount to use and document your LOR.

NOTE: If the apparent discrepancy results from nontaxable income (e.g., tax-free bonds, TSPs or 401Ks, etc.), make a brief comment in your LOR.

For example, a loan application indicates wages of \$64,000. The applicant has been with the same employer for 7 years. The IRS tax information for the most recent year reveals wages were \$49,000. The applicant informs you of a recent promotion from assistant vice-president to general manager. You must contact the employer, substantiate the higher wage, and document the chron log. Then you can use \$64,000.

Similarly, an application indicates annual wages of \$42,000 from employment as a full time high school teacher. The prior 2 FTRs reveal wages of \$38,100 and \$40,000 respectively. You contact the applicant and learn the difference is due to annual cost of living increases of approximately 5 percent. Because this is reasonable and consistent with historical information, you can use the higher wage of \$42,000 without additional documentation. Your chron log must detail the discussion which led to this conclusion.

Appendix 26 (Continued)

NOTE: You must use FTRs if applicants cannot provide a satisfactory explanation or documentation of differences between income reported on FTRs vs. the SBA 5C. If applicants maintain the income reported on the FTR is understated, they can file amended tax returns and we may consider them upon confirmation by the IRS 8821 data. If they don't provide amended FTRs, a decline is warranted.

(4) Social Security Income.

Some applicants don't have to file FTRs if their income includes social security (including permanent SS disability) and they don't have dependent children. In some cases you can use the amount reported on the SBA 5C unless the amounts reported include temporary benefits. To include them as income, you must obtain written verification (i.e., copy of award letter) and determine the beneficiaries, the amount(s), and the duration. Some examples are dependent benefits, benefits for temporary disabilities, workers compensation, etc., which might have a definite expiration date. If you know the temporary benefits are of short duration, exclude them from gross income without written confirmation.

(5) Pensions and Similar Retirement Income.

FTRs generally disclose the distribution of pensions, annuities, IRA and 401(K) distributions, etc. However, if it is below the minimum level required to file an FTR, no separate documentation is necessary. In some instances, the applicant may have filed a short form FTR (IRS 1040A or IRS 1040EZ) which discloses pension/IRA income, but does not disclose concurrent SS income. In these cases, you can use the SS income shown on the SBA 5C without separate documentation.

(6) Self-Employment Income.

You must carefully examine self-employment income. On a case-by-case basis, you may need additional information (e.g., current financial statements) if FTRs are not current or representative of present operations.

Appendix 26 (Continued)

- (a) You can consider the employment stable if the applicant has been self-employed for 2 years or more or was previously employed in the same line of work.
 - (b) You must add back certain items to net profit when determining GAI. These include depreciation, duplicated interest, noncash charges and similar items. You must analyze 2 years FTRs and determine the trend. If the trend is stable or upward, without unusual circumstances (change in business emphasis, change in market base due to the disaster, etc.), you can base repayment on the adjusted net profit. If the trend is downward, or unusual circumstances exist, further analysis is necessary using the business loan criteria.
 - (c) You must identify trends and calculate averages if income is from commissions and fluctuates from year to year.
- (7) Other Income.
- (a) You may consider overtime pay and bonuses as continuing income if the applicant:
 - ◆ Received this income on a consistent basis for the last 2 years; and
 - ◆ Will receive it on a regular basis in the future.
 - (b) You may consider interest and dividend income continuing if the amounts stated on the application generally reconcile to FTR data and the "Statement of Assets," Section D. If they do, no further proof is needed. Otherwise, you must obtain appropriate documentation or explain why they don't reconcile. (Frequently, applicants include recent disaster-related insurance settlements as part of their cash on hand.)
 - (c) You may consider note receivable and seller-financed mortgage income continuing if the amounts stated on the application generally reconcile to FTR data and the SBA 5C. If they do, no further proof is needed. However, you must always:

Appendix 26 (Continued)

- ◆ Determine the duration of this income;
 - ◆ Determine the principal portion (if any); and
 - ◆ Require copies of the Note or other proof if not supported by FTR data.
- (d) Applicants in the military services, and certain other applicants, may be entitled to different types of pay in addition to their base pay (e.g., flight or hazard pay, allowance for rations, clothing, quarters, car, etc.). You can consider this part of stable income if you document its continuance.
- (e) You may consider alimony and child support income if:
- ◆ The applicant discloses this income; and
 - ◆ You establish continuance for a reasonable period of time.
- Alimony income disclosed on the SBA 5C should reconcile to FTR data. If it does, no further proof is needed (IRS requires alimony to be declared on the FTRs, but not child support). Otherwise, you must obtain documentation (divorce decree, court order, etc.).
- (f) You may consider nontaxable income, such as tax free bonds, if properly documented.

c. Conflicting FTR Information.

You must compare the applicant's FTR (if provided) with the IRS transcript. You must report substantial differences immediately to the OIG (see paragraph 10).

3. THE FIXED DEBT METHOD (FDM)a. Introduction.

Disaster loans are unplanned debts, and create neither an increase in assets nor an improvement in lifestyle. Because disaster loans repair/replace existing property,

Appendix 26 (Continued)

applicants pay twice to maintain those assets. Although replacing disaster damaged property is our mission, the nature and purpose of the debt does not affect the fact that there is a certain maximum level of debt that one can afford. The FDM is a lending concept based on guidelines used by the mortgage banking industry. The FDM assumes:

- (1) There is a maximum debt level (expressed as a percentage of gross income), one can afford;
- (2) If the maximum debt level isn't exceeded the balance of gross income can pay taxes and ordinary and necessary living expenses; and
- (3) Once the maximum debt level is exceeded, default is more likely to occur.

b. FDM Calculation.

- (1) The FDM formula is:

$$\begin{aligned} \text{GMI} \times \text{MAFD percent} &= \text{MAFD} \\ \text{MAFD} - (\text{MFD} + \text{IIP}) &= \text{CA} \end{aligned}$$

- (2) Definitions.

- (a) GMI (Gross Monthly Income). The amount calculated in section H of the 140, divided by 12.
- (b) MAFD percent (Maximum Acceptable Fixed Debt Percentage). The percentage of income which generally can be allocated for fixed debts without incurring undue risk. For SBA disaster loan purposes, the standard MAFD percent is 36 percent for GAI of \$25,000 or less and 40 percent for GAI above \$25,000.
- (c) MAFD (Maximum Acceptable Fixed Debt). The result of the $\text{GMI} \times \text{MAFD percent}$ calculation, expressed in dollars. This amount usually represents a ceiling at which point the applicant can incur no more fixed debt without undue risk.
- (d) MFD (Monthly Fixed Debt). The greater of: (1) the total amount of all continuing fixed obligations (exclusive of living expenses), or (2) 25 percent of GMI.

Appendix 26 (Continued)

- (e) IIP (Increased Insurance Premiums). The monthly cost of any additional flood or hazard insurance premiums to be incurred as a condition of the SBA disaster loan.
- (f) CA (Cash Available For Additional Fixed Debt). The remainder after deducting the MFD and IIP from MAFD.
- (g) One-third of CA. The target payment for the disaster loan.
- (3) Components of MFD.
 - (a) House Payment (PITI) or Rent Includes:
 - ◆ Rent and renter's insurance.
 - ◆ Mortgage payments (principal, interest, taxes, and insurance) on all nonbusiness R/E owned (business mortgage payments are addressed separately as business fixed debt). If there is no mortgage payment, include R/E taxes and insurance.
 - ◆ Payments on contracts to purchase (includes land sale contracts, contracts for deed, etc.) and any associated taxes and insurance.
 - ◆ Condominium, Homeowner, or other Association fees.
 - ◆ Manufactured Home installment payment (principal, interest, taxes and insurance); lot or space rent.
 - ◆ Existing insurance premium, if not included in the mortgage payment (e.g., flood, earthquake, etc.).
 - (b) Fixed Debt Payments and Car Loans Include:

Any fixed debt with a balance equal to 10 or more monthly installments. This includes future obligations such as deferred student loans.

Appendix 26 (Continued)

- (1) You can't include payments with fewer than 10 monthly installments unless you confirm their continuance. For example, if a car loan pays out in less than 10 months, you can only retain the payment if the applicant confirms their intent to replace the vehicle.
 - (2) You can't include payments for non-existing debt unless you confirm the applicant's intent. For example, you can't include a replacement vehicle payment, even if the current vehicle is old, unless the applicant:
 - ◆ Confirms they are buying one;
 - ◆ Provides some detail on the year, make, and model; and
 - ◆ Approximates the installment amount.
 - (c) Payments on business fixed debt are not components of MFD. These payments appear in section H of the 140.
 - (d) Credit Card and Other Revolving Charge Accounts.
- If the application or CBR doesn't indicate a monthly payment, you must:
- (1) Contact the applicant and use the required minimum monthly payment on the current balance; or
 - (2) Use the greater of 3 percent of the balance or \$20 if you can't make contact.

NOTE: If an applicant states they pay credit card balances in full every month, you can exclude those payments from MFD provided:

- ◆ The amounts they say are paid in full each month are realistic given their overall financial condition; and
- ◆ Your LOR includes justification.

Appendix 26 (Continued)

(e) Extraordinary Continuing Expenses.

You must narrowly interpret this category and only include expenses/obligations if they are:

- (1) Significant (unusually large in proportion to applicant's income); and
- (2) Continuing (for at least 10 months); and
- (3) Mandatory (not discretionary and exclusive of items ordinarily treated as living expenses).

Examples include:

- ◆ Extraordinary medical expenses (e.g., dialysis, prescribed physical or rehabilitation therapy not covered by insurance);
- ◆ Extraordinary tuition expenses required by physical disabilities (e.g., blindness, mental retardation, etc.);
- ◆ The total amount of child care shown on the application if the applicant is a single parent (or if the applicants are working parents) provided child care is disclosed on the FTRs. If child care started after the filing of the most recent FTR, the amount disclosed on the SBA 5C is sufficient documentation; and
- ◆ Alimony or child support if disclosed on the FTR or documented by court order.

The following are not extraordinary expenses:

- ◆ Ordinary medical expenses (including medical insurance); and
- ◆ Tuition for schools and colleges (basic educational expenses).

Appendix 26 (Continued)

(4) Effect of Living Expenses on FDM.

Living expenses do not affect the calculation of repayment ability under the FDM. They are included in the portion of gross income remaining after subtracting the MAFD. The FDM assumes applicants will adjust their living expenses to meet unusual obligations (e.g., vacations, excessive auto insurance costs, etc.).

c. Repayment Ability Determination: Standard MAFD percent.(1) If CA is positive, you must:

- (a) First attempt to amortize the eligible loan amount within 30 years using the target payment of one-third CA. If it amortizes, recommend those terms. (Remember to investigate refinancing eligibility if maturity is more than 15 years). Otherwise;
- (b) Attempt to amortize the eligible loan amount within 30 years using up to 100 percent of CA. If it amortizes, recommend those terms. (However, exercise caution before recommending a 30-year loan on a relatively small amount).

(2) If CA is positive but won't amortize the loan amount within 30 years, or if CA is negative, you must consider if:

- (a) The applicant is eligible for refinancing (see paragraph 36); or
- (b) The applicant is able to carry more than 40 percent MFD; and

NOTE: Generally, we don't consider applicants with GAI less than \$25,000 able to carry MFD in excess of 36 percent.

- (c) A limited approval is appropriate.

d. Refinancing.

If the applicant is eligible for refinancing, you must first calculate the maturity

Appendix 26 (Continued)

without refinancing using the target payment and the standard deferment. Then you apply the following:

- (1) If the loan will amortize in 15 years or less, you should not offer refinancing; or
- (2) If the loan will amortize in more than 15 years, you may offer refinancing. The payment on the disaster loan which includes refinancing should be at least the same as the existing payment being refinanced. If the resulting maturity is less than 15 years, the applicant remains eligible for refinancing.

e. Determination of Repayment Ability in Excess of 40 percent MAFD.

Some applicants may be able to carry more than the standard MAFD percent. You must make this determination on a case by case basis. You can't recommend a loan in excess of the standard MAFD percentage unless you justify it according to the guidance below. Where an approved loan requires the applicant to carry more than 45 percent of MAFD, you must forward a copy of the LOR and SBA 5C to ODA (through the AD) within 5 working days after the loan approval.

The following are acceptable justifications for exceeding the standard MAFD percentages:

(1) High Income and Relatively Low Living Expenses.

For this purpose, "high income" means GAI is at least \$85,000. Low living expenses are generally related to applicants with few dependents, but not in every case. (It is possible for an average size family to have low living expenses.) You can't use this justification unless both of these factors are present.

(2) Future Income Prospects.

This applies only to:

- ◆ Applicants whose earnings in their occupational field or industry are rapidly increasing (e.g., a doctor, who at the time of the disaster was in the first few years of a medical practice); or

Appendix 26 (Continued)

- ◆ Applicants with excellent prospects for substantial future income increases (e.g., a skilled tradesperson such as an apprentice plumber who can reasonably expect to get a journeyman's license shortly).

(3) Demonstrated Ability to Handle Debt.

You can justify exceeding the standard MAFD percentage if the applicant has demonstrated the ability to devote a greater part of income to monthly fixed debts. You can't use this justification unless the applicant has an excellent credit history. You can consider the ability demonstrated if the applicant continuously or historically paid more than 40 percent of GMI in fixed debts and maintained an excellent credit history. However, you can't exceed the historically demonstrated level using this justification.

For example, assume an applicant demonstrated the ability to handle 42 percent MAFD. If the MAFD percentage after the SBA loan (with or without refinancing) exceeds 42 percent, you can't use this justification.

(4) Accumulation of Sizeable Net Worth.

You can justify exceeding the standard MAFD percentage if the applicant has accumulated sizeable net worth and maintained an excellent credit history.

For this purpose, "sizeable net worth" means tangible net worth equal to or greater than 1 year's salary based on current and foreseeable annual income. You must be certain that the tangible net worth is not due to real estate appreciation, inheritances, or similar circumstances requiring no financial contribution from the applicant.

NOTE: The above justifications may "stand alone." You can recommend exceeding the standard MAFD percentage using any one of the reasons above, provided it is relevant and documented. However, AAD/LP approval is required if you recommend exceeding the standard MAFD percentage for any other reasons.

f. Limited Approval.

Before recommending a limited approval, you must:

Appendix 26 (Continued)

- (1) Use 100 percent of CA;
- (2) Set the term at 30 years;
- (3) Consider and comment on the availability of assistance from IFG or other sources to make up the difference between the eligible amount and the limited loan amount; or
- (4) Document that the limited loan will permit sufficient repairs to render the house habitable if IFG or other assistance is not available (see paragraph 85).

g. Determination of Interest Rate.

If CA is positive, you complete the CET. If CA is negative, but you justify a higher MAFD%, complete the Other Assets Test.

h. Establishing Repayment Amount.

- (1) General Rule. You set the monthly payment at one-third CA, provided it amortizes the loan within 30 years using the standard deferment. Otherwise, you write a 30-year term and set the payment up to 100 percent of CA.
 - (a) If the payment for a 30-year term exceeds 100 percent of CA, consider the possibility of exceeding the standard MAFD percentage, refinancing, or writing a limited approval. Otherwise, you must recommend decline 21.
 - (b) If you exceed the standard MAFD percentage, the nonstandard 100 percent CA figure will be the payment and you should write the loan for 30 years. In some instances this may result in loan terms which appear less than practical for the applicant's financial condition, (e.g., small loans or loans to applicants with high income). In those cases, use your discretion in setting the term.
- (2) Exceptions to the General Rule.
 - (a) Applicant requests payment greater than one-third CA. You may grant this request if:

Appendix 26 (Continued)

- ◆ The payment doesn't exceed 100 percent of CA; and
 - ◆ Your LOR clearly indicates it was at the applicant's request.
- (b) Setting payments below 1/3 of CA. You may set the payment below 1/3 CA only in cases of no credit elsewhere and
- ◆ Relatively low, fixed retirement, permanent disability, or similar income; or
 - ◆ Relatively low income (income is expected to remain low) where there is also a clear need to devote a large share of the income to living expenses (such as for a large number of dependents or to support known unusually heavy expenses); or
 - ◆ Low income and low fixed debt with an anticipation that necessary fixed debt will materially increase.
- Your LOR must justify setting a payment below one-third CA. You can't do it if the income is not relatively low or if the reason tends to duplicate the FDM theory. For example, you can't argue that living expenses are more than 60 percent of GMI without demonstrating how they are substantially greater than normal.
- (c) Adding \$50 to the payment. Sometimes, the general rule establishes a payment which is less than practical for the applicant's financial condition (e.g., small loans or loans to applicant's with high income). In these cases, use your discretion in setting the terms. Within the standard CA, you can add up to \$50 per month to the payment to help shorten the maturity, but not merely to avoid small payment amounts. You must obtain the applicant's consent if:
- ◆ You exceeded the standard MAFD%; and
 - ◆ The term is less than 30 years.
- (d) Applicant requests a lesser loan amount. In this instance you must recalculate the payment based on one-third CA.

Appendix 26 (Continued)

i. Loan Officer's Discretion.

The FDM is a guideline to help you determine repayment ability and terms. You must exercise your credit analysis skills, use discretion, and evaluate all information to be successful. Only your reasoned and thorough analysis of all relevant facts can help balance prudent lending of subsidized funds and sympathetic consideration of the disaster victims' needs.

APPENDIX 27

INDEX

This index uses key words which, when referenced to the indicated paragraph or appendix (A__), enable you to learn the eligibility, ineligibility, or explanation of the particular subject matter.

<u>A</u>	<u>Paragraph,</u> <u>Appendix,13CFR</u>
Abbreviated processing procedures	79
Accelerated debt	124,A20
Accelerated processing decline	43,69,A2,A18,A19
Acceptable application	66,69
Accrued interest	47
Acquisition of fixed assets	130
Additional R/E requirements	54
Adjusted net assets	A25
Administrative declaration	6
Administrative limit	41
Affiliate	8,A19,A21,A25
Affiliated group	48,117,A20,A21
Age of applicant	13,A26
Age of file	71
Agri-dependent community	122
Agricultural cooperative	1,62,114,116,120,124
Agricultural enterprises	15,32,117,120,121,122
Agricultural Marketing Act	116
Agricultural property	21
Aircraft eligibility	29
Alcoholic beverages	30
Alimony	A26
Alternative reasons for decline upon recon	100
Alternate use of eligibility	39
American Red Cross	6,44,A2
Animals	30
Annual average receipts	A21,121.104
Anti-discrimination compliance	53
Antiques	30,A18

Appendix 27

Appendix 27 (Continued)

<u>A</u>	<u>Paragraph,</u> <u>Appendix,13CFR</u>
Appeal	101
Applicant activity	A21
Applicant's character	14,74
Applicant's representative	9,72
Application forms	61,63,64,65
Appraisals	48,A11
Aquaculturists	15
Art work	30
Assignments of insurance	44
Associate Administrator for Disaster Assistance	3,A2
Associations	25
Assumption of risk	15
Attitude	7,89
Authority	1, 114
Authority to approve, decline, or withdraw loan modification requests	111
Authority to approve, decline, or withdraw loans	8
Authority to approve, decline, or withdraw loans on further reconsiderations	101
Authority to approve, decline, or withdraw loans upon reconsideration	100
Authority to approve, decline, or withdraw MSE loans	42
Authority to approve refinancing	36
Authority to extend disbursement period	94
Authorized representative	9,72
Authorized refinancing	36
Available assets test	A25
Average number of employees	A21,121.106
<u>B</u>	
Bailee for hire	13
Balloon payment	47
Bankruptcy	76
Benchmark rates	A24
Beneficial owners	13,A6
Boats	29
Boat house	32
Bonus income	A26

Appendix 27

Appendix 27 (Continued)

Paragraph,
Appendix,13CFR

B

Bonuses	130
Borrower's progress certification	95
Bridge loans	36
Building codes	38
Business activity	117
Business area	37,123.101(l)
Business concern	116,A21,121.105
Business contents eligibility	31
Business Interruption insurance	62,131

C

CASAD	A19,A25
Calculating payments	47
Cancellation	109
Case file arrangement	
Cash	30
Cash available	A26
Cash flow test	A24,A25
Casinos	120
Catalog of loan authorization text	A16
Certificate of origin	A5
Change in market price	121
Change of employment	A26
Change of ownership	13,15,120
Character determination	74
Child support compliance	14
Child support income	A26
Chronological contact sheet	12,69,A11
Civil disorder	14,74
Coastal Barrier Islands	32
Code of Federal Regulations	2
Code requirements	22,36,38,40,112
Collateral requirements - condo & associations	24,48
Collateral requirements - general	48,129

Appendix 27

Appendix 27 (Continued)

Paragraph,
Appendix, 13CFR

C

Collateral requirements – relocation	37
Collections (PP)	30,A18,A24
Combination loans	79
Combined loan limit	41
Commitments outstanding	89,A5
Common road damage	25
Community property state	14,A23
Community under sanction	32,37,51
Completed fiscal year	A21,121.104(a)(2)
Concern	116,A21
Concerns established post-disaster	120
Condemned structures	32
Conditional commitment letter	44,88,89,A2,A5
Conditions, Covenants & Restrictions	24
Condominium Associations	24
Condominiums	24
Confidential information	9
Congressional inquiries	11
Construction	51
Construction requirements	54,A18,A19
Consumer cooperative	120
Consumer Credit Protection Act	75,77
Contacting prior lienholders	36
Contested location in a SFHA	51
Contract to sell	13
Control	A21,121.103(a)(1)
Conviction	14,74
Cooperative associations	25
Copies of documents	12
Cost eligibility	22
Cost in excess of pre-disaster FMV	22,37
Cost of goods sold	124,A19,A2,A20
Credit Bureau Report	69,76,A2
Credit card payments	A26
Credit elsewhere	42,46,47,62,A24,A25,123.104
Credit elsewhere test	A2,A18,A19,A24,A25

Appendix 27

Appendix 27 (Continued)

Effective Date: April 26, 1999

Paragraph,

Effective Date:

Page 334

CAppendix, 13CFR

Credit history	76,A26
Credit information	76,A11
Credit inquiry letter	36,37,76,A9,A11,A22
Criminal arrest	14,74
Custom conditions	86

D

Date stamping	69
Debris removal	62
Declaration types	6
Decline-automatic (DECA)	59,A2
Decline codes	83,A4
Decline of application	83
Deductible lending	44
Deduction from verified losses	44
Deferred maintenance	22,37
Delegation of authority	8
Delinquency on Federal obligations	76
Delivery sequence	73
Demonstrated ability	A26
Department 39	89
Determining physical eligibility	44
Direct costs	22
Direct Federal debt	76,130
Disaster	123.2
Disaster area	123.4
Disaster Area Office	3,A2
Disaster declaration	123.2
Disaster Field Office	59,A2
Disaster Recovery Center	59,A2
Disbursement amounts	96
Disbursement conditions	95,A20
Disbursement period	57,94
Discussion of credit report	76
Dividend income	A26

Appendix 27

Appendix 27 (Continued)

Paragraph,
Appendix, 13CFR

D

Dividends	130
Do it yourself construction	54
Documented vessel	29,A5
Documentation of contact	69,A11
Drought (SecAg designation)	121,122
Dun and Bradstreet	76
Duplication of benefits	44,73,A2

E

ECOA	14,75,A2,A23
Economic injury defined	124,123.300
EIDL Addendum	126,127,A1,A20
Eleemosynary organizations	120
Eligibility of applicants	13,119
Eligibility of property	15
Eligible physical loss	44,A18,A19
Emergency living expenses	44,A2
Employee loans	8
Equal installment payments	47,128
Equity	13,48,A18,A19,A25
Equity owners	
Escrow accounts	97
Estimated sales	A20
Ethnicity	69,A8
Executive orders	42,52
Expansion of facilities	130
Extension of disbursement period	94
Extraordinary expenses	A26
Extraordinary items	124,A20

F

Failure to comply	15,51
Fair market value	36,A2,A18,A19,A24
Farmers	15

Appendix 27

Appendix 27 (Continued)

Paragraph,

Effective Date: December 1, 1997

Page 336

FAppendix, 13CFR

Federal debt	62,76,130,A4
Federal Debt Collection Procedures Act	123.14
Federal obligations	76
Feed lot operators	120
FEMA assistance	44
FEMA Service Center	59
File age	71
File arrangement	12,A11
File consolidation	82
File documentation	12
Filing period	66
Final appeal	101
Fingerprint policy	74
First payment due date – EIDL	128
First payment due date – Physical	47
Fixed Debt Method	A2,A26
Fixed debt payments	A26
Flood insurance requirements – EIDL	131
Flood insurance requirements – Physical	51
Flood plain management	52
Flood zone determination	51
Formal size determination	105,A21
Fourteen Day Letter	69,71
Free from significant control	118
Free labor and materials	44
Frequency of payments – EIDL	128
Frequency of payments – Physical	47
Frozen accounts receivable	A20
Frozen inventory	A20
Functional value	30,A18
Funding	89
Furs	30
Further reconsideration	101
Future needs	A20
Future income prospects	A26

Appendix 27

Appendix 27 (Continued)

Paragraph.

GAppendix, 13CFR

Gambling concerns	120
Gender	14,69,A8
General eligibility rule	17,24
Government sponsored buyouts	44
Governmental entity	A6,A7
Governors Certification	6,123
Grace period - CCL deadline	89
Grace period - filing deadline	66
Gross margin	124,A2,A20
Gross monthly income	A2,A26
Guarantee	49
Guarantee requirements – EIDL	129
Guarantee requirements – Physical	49
Guarantors	49
Guaranty	49

H

Handicapped individuals	39
Hazard insurance requirements – EIDL	131
Hazard insurance requirements – Physical	50
Hardship waivers	A24,A25
Heavily encumbered assets	A24,A25
High income	A26
History of the business	A19
Hobbies	14
Hobby items	30
Homeowners association	24,A2
Homestead exemption	19
House payment	A26
Household	30

I

Identity of interests	A21,A25,121.103(a)(3)
IFGP grants	44,A2

Appendix 27

Appendix 27 (Continued)

Paragraph,

IAppendix, 13CFR

If/When condition	51
Illegal aliens	13
Income statements	A19,A20
Income test table	59,61,69,A12
Increase EIDLs	113
Increase physical loans	112
Increased insurance premium	A2,A26
Independently owned and operated business	118
Indian tribes	13,A7
Indictment	14,74
Indirect costs	22
Individual unit owner	24
Ineligible applicants-EIDLs	120
Ineligible applicants-physical loans	15
Ineligible personal property	30
Ineligible property - physical loans	32
Ineligible use of proceeds – EIDL	130
Initial interview	61
Initial size determination	A21
Injury analysis	A20
Injury period	A20
Injury period GM	A20
Injury period MCM	A20
Installment amounts – EIDL	128
Installment amounts – Physical	47
Insurable property	51
Insurance recoveries	36,44
Insurance requirements	50,51,131
Intangible assets	A25
Interest income	A26
Interest rates – EIDL	128
Interest rates – Physical	46
Interim loans	36
Interview topics	62
Interviewer's responsibilities	61
Interviewing	60

Appendix 27

Appendix 27 (Continued)

Paragraph,

IAppendix, 13CFR

Inventory insurance requirement	50
Investment concerns	120
Investment properties	22
Involuntary relocation	37

J

Joint venture	116
Judgments	76

KL

Labor surplus area	A21
Land eligibility	26
Landlord's waiver	55
Landscaping eligibility	27
Late filed application	66
Late reacceptance requests	106
Late reconsideration requests	100
Late reinstatement requests	110
Lawsuits	76
Lease extensions	55
Lease modification	55
Lease requirements	55
Leasehold improvements	13,55
Legal aliens	13
Legislative limit	41,115
Lending concerns	120
License requirements	28,29
Liens	36
Limited approval	A18,A26
Limited eligibility	30,33
Limited Liability Company	116
Limited repayment ability	85

Appendix 27

Appendix 27 (Continued)

Paragraph,

Effective Date: December 1, 1997

Page 340

LAppendix, 13CFR

Living expenses	A19,A26
Loan approval (funding)	89
Loan Authorization and Agreement	87,A2
Loan cancellations	109
Loan closing	92,132
Loan closing deadline	93
Loan increase	112
Loan limits	41
Loan modification	111
Loan Officer Reports	80,A2,A18,A19
Loan packagers	120
Loan servicing	108
Loan terms – EIDL	128
Loan terms – Physical	47
Location of property – EIDL	117
Location of property – Physical	18
Loggers	121
Loss activity	117
Loss in excess of lending limits	85
Losses in more than one state	67
Lost GM	A20
Lost MCM	A20
Lottery tickets	30

M

Main activity	117
Major source of employment	42,A2
Mandatory payoff of lien	44,62,A18,A19
Mandatory relocation	37
Manufactured housing	23,A2
Marketing cooperative	120
Maximum acceptable fixed debt	A26,A2
Maximum term – EIDL	128
Maximum term – Physical	47
Maximum term – Nonprofit	47

Appendix 27

Appendix 27 (Continued)

Effective Date: April 26, 1999

MParagraph,
Appendix, 13CFR

Effective Date:

Page 341

Mechanics lien	36
Membership groups	14,A17
Military pay	A26
Minimal Repair Program	44,A2
Minimum residential standards	38
Mitigation measures	38,40,44
Mixed-use structures	19
Modified contribution margin	124,A2,A20
Monthly fixed debt	A2,A26
Monthly sales analysis	A20
Mortgage holders	13,15
MRP funds	44

N

National Flood Insurance Program	15,51,A2
National Register of Historic Places	22
National Teleregistration Center	59,A2
Native Americans	13,A6
Needs	124,A20
Negotiable instruments	30
Net insurance	44,A18,A19
No credit elsewhere	46,A2
Nonprofit interest rate	46,A25
Nonprofit organizations	13,36,46,120
Non participating community	32,51
Normal GM	126,A20
Normal MCM	A20
Normal sales	A20
Not readily marketable or liquid	A24,A25
Note receivable income	A26
Notice of disqualification	32,37
Notification of loan approval	90
Nurseries	13,32,121

Appendix 27

Appendix 27 (Continued)

O

Paragraph, Appendix,13CFR

Obscene material	14
------------------	----

Office of Disaster Assistance	3,A2
Office of the Inspector General	10,A2
Office of Hearings and Appeals	105,A2,A21
Organizing business	13
Other assets test	A24
Other disaster relief organizations	44
Out of sequence assistance	73
Outreach Center	59
Overall financial condition	A19,A20,A26
Overhead and profit	44
Overtime income	A26

P

Parent	14,30,A25
Partial refinancing	36
Parole	14,74,120,A5
Part time employment	A26
Participating community	51
Pawn Shops	120
Pension income	A26
Performance bonds	54
Period of measurement (AAR determination)	121.104
Personal history questions	74,A5
Personal property eligibility	30
Pets	30
Phase I	123,125,A20
Phase II	123,126,A20
Phase III	123,127,A20
Photocopied LORs	80
Place of filing applications	67
Planned unit development	25
Poor credit history	76
Prepayment penalties	36

Appendix 27

Appendix 27 (Continued)

P

Paragraph,
Appendix,13CFR

Presidential declaration	6
Primarily engaged	A21

Primary activity	A20,A21
Primary residence eligibility	19
Primary residence of another	13
Principals	49,A25
Prior lienholders	36
Prior liens – CET	A24,A25
Prior liens – Collateral	48
Prior SBA history	76
Private colleges and universities	47
Probation	14,74
Protective devices	40
Provision for seismic safety	54
Public entities	15
Publicly owned institutions	15
Publicly owned property	32
Purchasers of damaged property	13,15
Pyramid concerns	120

Q

Quick justifications	A24
----------------------	-----

R

Racetracks	120
Ranchers	15
Reacceptance	106
Real estate developers	120
Reamortization	36,A26
Recommendation	8,42,47,81,A18,A19
Reconciliation of income	A26
Reconsideration of APD decline	100
Reconsideration of loan modification decline	103
Reconsideration of MSE status determination	104

Appendix 27

Appendix 27 (Continued)

R

Paragraph, Appendix,13CFR

Reconsideration of original application decline	100
Reconsideration of size determination decline	105
Reconsideration of summary decline	100

Recreational facilities	27
Recreational vehicles	28
Reduction	109
Referral by SBA	61
Referral to Inspector General	10
Refinancing - condos & associations	24
Refinancing - general	36,A26
Refinancing - long term debt	130
Registration - FEMA	60
Registration - SBA	60
Reinstatement	110
Release of collateral	48
Religious organizations	13,14,120
Relocation	37
Relocation plan	37
Rental property applications	65
Rental property owners-EIDLs	119
Rental property owners-physical applications	13
Rental unit	65
Reorganization	76
Repair cost eligibility	22
Repayment ability	36,62,84,A26
Repayment terms - general	47
Repayment terms - refinancing	36
Repayment to IFG	44,123,101
Replacement cost eligibility	22
Representative Index	72,A1
Requirements for R/E repair	54
Retirement income	A26
Return notice	69,A1
Reverification	71
Revolving charge accounts	A26
Right to financial privacy	A9,A22

Appendix 27

Appendix 27 (Continued)

<u>R</u>	<u>Paragraph,</u> <u>Appendix,13CFR</u>
Riot	14,74
Rising water	51
Road associations	25
Robert Morris Associates	A2,A19

Rounding	45
Rule of Two	8

S

Sanctioned community	32
SBA loan history	76
SBA referral	61
SBA verified total loss	44,A19
Schedule of future debt	A19
Screening procedures	69
Seasonal employment	A26
Seasonal occupancy on leased land	32
Seaward of mean high tide	32
Secondary homes	24,32,62
Secretary of Agriculture Designation	6,121,122
Secured loan limit - EIDL	129
Secured loan limit - Physical	48
Seismic safety	54
Self employment income	A26
Seller financed mortgage income	A26
Significant source of income	A24
Single legal entity	A21
Size	105,117,A18,A20,A21
Size appeal	105,A21
Size determination	A21
Size standards	A21,121.201
Sizeable net worth	A26
Small	116
Small Ag Co-op	1,116
Social Security income	A26
Special Flood Hazard Area	15,51,A2

Appendix 27

Appendix 27 (Continued)

SParagraph,
Appendix,13CFR

Special or unusual circumstances	37
Specialized use facilities	A24,A25
Speculative activities	120
Spreadsheet	A19,A20
Standard deferment - EIDL	128
Standard deferment - Physical	47
Effective Date: December 1, 1997	Page 346

Standard disbursement period	57,94
Standard industrial classification	A18,A19,A20,A21,121.201
Standard MAFD percentages	A26
Standard R/E requirements	54
Statements required by law and executive orders	69,A22
Subsequent disbursement	95
Subsidiary	A25
Substantial business risk	118
Substantial damage-general	36
Substantial damage-NFIP	37
Summary decline	59,61,69,100
Summary decline letter	61,69

T

Tangible assets	A25
Tangible post disaster FMV	A25
Target payment	44,A24,A26
Telephone contact	71,81
Temporary hold	69
Tenants	13
Terms and conditions - EIDL	128,129,131
Terms and conditions - Physical	81
Title search	95
To date needs	A20
Total payment at benchmark rate	A24
Totally destroyed	36
Trends	A20
Tribal owned businesses	13,A7
Tuition	A24,A26

Appendix 27

Appendix 27 (Continued)

UParagraph,
Appendix,13CFR

Unacceptable application	69
Uncompensated damage	36
Uncompensated physical loss	36,44,A18,A19,A24,A25
Uncontrollable or compelling reasons	37
Undue hardship	A24,A25
Unimproved land	26
Unimproved R/E	15
Uninsurable property	51

Effective Date: December 1, 1997

Page 347

Unlicensed vehicles	28
Unsecured loan limit - EIDL	129
Unsecured loan limit - Physical	48
Upgrading	38
Use of proceeds - EIDL	56,125,126,127
Use of proceeds - Mitigation	56
Use of proceeds - Physical	56
Use of proceeds - refinancing	36,56

V

Vehicle eligibility	28
Verification of damage	43
Vessel eligibility	29
Voluntary application of insurance proceeds	44,62
Voluntary relocation	37

W

Wage earner plan	76
Walk away eligibility	13
Wetlands Protection Act	52
Wholesalers	122
Wind driven water	51
Withdrawal codes	A3
Withdrawal of application	82
Workshop	59

XYZ

Appendix 27



SMALL BUSINESS ADMINISTRATION STANDARD OPERATING PROCEDURE

National

SUBJECT: Disaster Assistance Program	S.O.P.		REV
	SECTION 50	NO. 30	4A

INTRODUCTION

1. Purpose. To update policy and procedural guidance concerning disaster loan making.
2. Personnel Concerned. Headquarters and Area Office personnel engaged in disaster lending activities.
3. Page Changes.

Remove

Insert

93-94

93-94

101-102

101-102

111-112

111-112

157-158

157-158

4. Originator. Office of Disaster Assistance.

AUTHORIZED BY: Bernard Kulik Associate Administrator for Disaster Assistance		EFFECTIVE DATE March 31, 1998
		PAGE 1

SBA Form 989 (5-90) Ref: SOP 00 23



SMALL BUSINESS ADMINISTRATION STANDARD OPERATING PROCEDURE

National

SUBJECT:

Disaster Assistance Program

S.O.P.

REV

SECTION

50

NO.

30

4B

INTRODUCTION

1. Purpose. To update policy and procedural guidance governing disaster loan-making.
2. Personnel Concerned. Headquarters and Area Office personnel engaged in disaster lending activities.
3. Page Changes.

Remove

Insert

7-8	7-8
9-10	9-10
15-16	15-16
21-22	21-22
59-60	59-60
93-94	93-94
123-124	123-124
147-152	147-152
157-158	157-158
167-168	167-168
181-184	181-184
203-204	203-204
247-248	247-248
307-308	307-308
333-334	333-334
341-342	341-342

4. Originator. Office of Disaster Assistance.

AUTHORIZED BY:

Bernard Kulik
Associate Administrator
for Disaster Assistance

EFFECTIVE DATE

April 26, 1999

PAGE

1



SMALL BUSINESS ADMINISTRATION STANDARD OPERATING PROCEDURE

National

SUBJECT:

Disaster Assistance Program

S.O.P.

REV

SECTION

50

NO.

30

4C

INTRODUCTION

1. Purpose. To update policy and procedural guidance governing disaster loan-making.
2. Personnel Concerned. Headquarters and Area Office personnel engaged in disaster lending activities.
3. Page Changes.

<u>Remove</u>	<u>Insert</u>
115-116	115-116
123-124	123-124
131-132	131-132
155-156	155-156
203-204	203-204
225-226	225-226
4. Originator. Office of Disaster Assistance.

AUTHORIZED BY:

Bernard Kulik
Associate Administrator
for Disaster Assistance

EFFECTIVE DATE

December 15, 1999

PAGE

1